

EXHIBIT 16

[illegible]

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences	
6	Humble Oil & Ref. Co. v. Boudin, 154 So. 2d 29	156-1	Actually, we are unable to rationalize how the actions or conduct of Pierre Boudin, in attempting to sell the one-half interest of the six heirs, or the actions of the successor heirs, created what is regarded as an estoppel. Generally speaking, it may be said that estoppel is a bar which precludes a person and his privies from denying or asserting anything to the contrary of that which has, in contemplation of law, been established as the truth, either by the acts of judicial or legislative officers, or by the execution of a deed or his representations or conduct, express or implied. See 19 Ann.Jur. 601, Verbo Estoppel, Sec. 2. The general purpose of estoppel is to require honesty, fair dealing and good faith in the conduct of one's business. See 19 Ann.Jur. 602, Verbo Estoppel, Sec. 4. Estoppels are generally classified as one of three kinds: (1) Estoppel by record, as for instance where a party files pleadings in a suit, he may be thereafter estopped to assert a contrary position, where the opposing filigant has relied on such pleadings to his detriment. See: Staurton v. Vintrella, 223 La. 958, 67 So.2d 550. (2) Estoppel by deed, as for instance where a vendor warrants full title to vendee, the vendor is estopped to the later assert an interest contrary to his warranty. See Gaines v. Clecklen, 187 La. 345, 174 So. 666. (3) Estoppel "in pais" or equitable estoppel is a term applied to a situation where, because of some conduct on his part, a person is denied the right to assert or prove a certain fact, as for instance where a person has done or said something with the intent to influence the other, and the other has acted upon the faith of it to his detriment, the former is estopped to change his position. See Brock v. Black, Rogers & Co., 201 La. 1017, 10 So.2d 790.	Estoppels are generally classified as one of three kinds: (1) "estopped by record," as for instance where a party files pleadings in a suit, he may be thereafter estopped to assert a contrary position, where the opposing filigant has relied on such pleadings to his detriment. See: Staurton v. Vintrella, 223 La. 958, 67 So.2d 550. (2) Estoppel by deed, as for instance where a vendor warrants full title to vendee, the vendor is estopped to the later assert an interest contrary to his warranty. See Gaines v. Clecklen, 187 La. 345, 174 So. 666. (3) Estoppel "in pais" or equitable estoppel is a term applied to a situation where, because of some conduct on his part, a person is denied the right to assert or prove a certain fact, as for instance where a person has done or said something with the intent to influence the other, and the other has acted upon the faith of it to his detriment, the former is estopped to change his position. See Brock v. Black, Rogers & Co., 201 La. 1017, 10 So.2d 790.	"Is estoppel generally classified as one of three kinds, estoppel by record, estoppel by deed, and estoppel in pais?"	018008.docx	LEGALASE-00149025-LEGALASE-00149026	Condensed, SA	0.55	839	1	15,344	14,873	21,876	9,029
7	Taylor v. Jewish Hosp. & St. Mary's Healthcare, 26 F. Supp. 3d 642	223H+29	Under Kentucky law, "Agency is the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act." McKister v. Whitford, 365 S.W.2d 317, 319 (Ky.1962). Under the common law doctrine of respondeat superior, "a principal is bound by the acts of his agent, even though the agent acts without authority, other than an independent contractor, acting on behalf of and pursuant to the authority of the principal." Williams v. Kentucky Dept of Educ., 113 S.W.3d 145, 151 (Ky.2003). In determining whether a person is acting as another's agent or independent contractor, the following factors must be considered: (a) the extent of control which, by the agreement, the master may exercise over the details of the work; (b) whether or not the one employed is engaged in a distinct occupation or business; (c) the kind of work which is to be performed; (d) whether or not the work is usually done under the direction of the employer or by a specialist without supervision; (e) the skill required in the particular occupation; (f) whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work; (g) the length of time for which the person is employed; (h) the method of payment, whether by the time or by the job; (i) whether or not the work is a part of the regular business of the employer; and (j) whether or not the parties believe they are creating the relationship of master and servant.	Under Kentucky law, in determining whether a person is acting as an agent or independent contractor, the following factors must be considered: (1) the extent of control which, by the agreement, the master may exercise over the details of the work; (2) whether or not the one employed is engaged in a distinct occupation or business; (3) the kind of work which is to be performed; (4) the skill required in the particular occupation; (5) whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work; (6) the length of time for which the person is employed; (7) the method of payment, whether by the time or by the job; (8) whether or not the work is a part of the regular business of the employer; and (9) whether or not the parties believe they are creating the relationship of master and servant.	What are the factors that determine if a person is acting as an agent or independent contractor?	Principal and Agent - PK_63972.docx	R055-00293225-R055-00293226	Order, SA, Sub	0.37	1	0	1	1	1	1
8	In re Mario S., 38 Misc. 3d 24-179 444	24-179	Accordingly, under the current SIJ provisions enacted in 2008, in order "[t]o be eligible to petition the federal government for SIU status, the resident alien must be under age 21 and unmarried. The child must have been declared dependent upon a state juvenile court... [t]o [p]rovide the juvenile court with the information necessary to make a determination as to whether one or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law; and (2) that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence" (L.J.X.C. v.1424, 794 S.E.2d 120 (Internal citations omitted); see also, Y.M. at 1915, 144 Cal.Rptr.3d 54, Erick M. at 346*347, 820 N.W.2d 689; B.F. at 626, 143 Cal.Rptr.3d 730; Trudy Ann W. at 1795, 901 N.Y.2d 1100, 1101 (N.Y. 2013); Matter of A.M. at 110, 100 N.Y.2d 100, 101 (N.Y. 2005); Juon L. at 511, 905 N.Y.2d 633; Almoraz A. at 699, 917 N.Y.S.2d 309; Matter of Sing W.C., 83 A.D.3d 84, 86, 920 N.Y.S.2d 135 (2011); Matter of Mohamed B., 83 A.D.3d 823, 830*831, 921 N.Y.S.2d 145 (2011)).	Under the current special immigrant juvenile (SIJ) provisions of the Immigration and Nationality Act (INA), in order to be eligible to petition the federal government for SIJ status, the resident alien must be under age 21 and unmarried, he or she must have been declared dependent upon a state juvenile court, and the alien must be found to be one of the following: (1) that the alien's parents are not viable due to abuse, neglect, abandonment, or a similar basis found under state law, and (2) that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence. Immigration and Nationality Act, 5 101(a)(27)(J), 8 U.S.C.A. 5 1101(a)(27)(J).	Does a juvenile court make have to make a finding that it would not be in the alien's best interest to return to the alien's previous country of nationality to be eligible for Special Immigrant Juvenile (SIJ) status?	006775.docx	LEGALASE-00160320-LEGALASE-00160321	Order, SA, Sub	0.33	1	0	1	1	1	1
9	Canelec Enterprises v. Propoulos, 151 Wk. 2d 277	275-20	Court did not abuse its discretion in denying motion for new trial in re: trial court's decision to grant plaintiff's motion for summary judgment on its scheduling order to allow plaintiff's substitute counsel to undertake additional discovery and designate experts after plaintiff's original counsel withdrew from case; no showing was made regarding what expert testimony plaintiff would have presented, and thus, trial court could not have determined whether real controversy was or was not triable. Court did not abuse its discretion by refusing to revise its scheduling order to allow plaintiff's substitute counsel to undertake additional discovery and designate experts after her original counsel withdrew from case; counsel's withdrawal was not caused by conflict of interest.	Court did not abuse its discretion in denying motion for new trial in re: trial court's decision to grant plaintiff's motion for summary judgment on its scheduling order to allow plaintiff's substitute counsel to undertake additional discovery and designate experts after plaintiff's original counsel withdrew from case; no showing was made regarding what expert testimony plaintiff would have presented, and thus, trial court could not have determined whether real controversy was or was not triable. Court did not abuse its discretion by refusing to revise its scheduling order to allow plaintiff's substitute counsel to undertake additional discovery and designate experts after her original counsel withdrew from case; counsel's withdrawal was not caused by conflict of interest.	Will the court abuse its discretion in denying motion for new trial in re: trial when the plaintiff substituted counsel to undertake additional discovery and designate experts after plaintiff's original counsel withdrew from case?	Pretrial Procedure - Memo #6123 - C- TM.docx	R055-00289774-R055-00289775	Condensed, SA, Sub	0.31	0	1	1	1	1	1

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10	In re Cox Enterprises Sec. 101, Credit Information in re Cox, 790 F.3d 1112	251+182(2)	Our circuit has established a six-factor test to determine if the right to arbitration is waived. Reasoning that the parties' dispute is arbitrable, (1) whether the litigation machinery has been substantially invoked and the parties were well into preparation of a lawsuit before the party notified the opposing party of an intent to arbitrate; (2) whether the party either requested arbitration enforcement close to the trial date or delayed for a long period before seeking a stay; (3) whether a defendant seeking arbitration filed a counterclaim without asking for a stay of the proceedings; (4) whether important intervening steps, e.g., taking advantage of judicial discovery procedures not available in arbitration, were taken; and (5) whether the delay affected, misled, or prejudiced the opposing party. Id. at 467 '68 (quotations omitted). Applying this six-factor test, the district court concluded that Cox, through its actions and omissions, waived its right to compel arbitration.	In determining whether party has waived its right to arbitration, court considers: (1) whether the party's actions are inconsistent with the right to arbitration; (2) whether the party either requested arbitration enforcement close to the trial date or delayed for a long period before seeking a stay; (3) whether a defendant seeking arbitration filed a counterclaim without asking for a stay of the proceedings; (4) whether important intervening steps, e.g., taking advantage of judicial discovery procedures not available in arbitration, were taken; and (5) whether the delay affected, misled, or prejudiced the opposing party.	What are the factors the court will consider in determining whether a party has waived its right to arbitration?	10740.docx	LEGALSE-00094127- LEGALSE-00094129	SA, Sub	0.23	0	15,344	14,873	21,876	9,079
11	Kelly v. New W. Fed. Sav., 49 Cal. App. 4th 629	307A+3	"Motions in limine are a commonly used tool of trial advocacy and are brought at the beginning of trial although they may also be brought during trial when evidentiary issues are anticipated by the parties. In either event, they are argued by the parties, either orally or in writing or both, and ruled upon by the trial judge. The usual purpose of motions in limine is to preclude the presentation of evidence deemed inadmissible and prejudicial by the moving party. A typical order in limine excludes the challenged evidence and directs counsel, parties, and witnesses not to discuss the excluded evidence at trial." (People v. Soto, 2015 WL 349,349, *2013-10-19-1985). "The standard for motions in limine is to avoid the obviously futile attempt to 'turn the ball' in the event a motion to strike is granted in the proceedings before the jury." (Hyatt v. Sierra Boat Co. (1978) 79 Cal App 3d 326, 337 [145 Cal Rptr. 471]). Motions in limine serve other purposes as well. They permit more careful consideration of evidentiary issues than would take place in the heat of battle during trial. They minimize side-bar conferences and disruptions during trial, allowing for an uninterrupted flow of evidence. Finally, by resolving potentially disruptive evidentiary issues in advance, motions in limine promote potentially efficient settlements. (Citation.)" (People v. Morris (1991) 53 Cal 3d 152, 188, 279 Cal Rptr. 720, 807 P.2d 949, disapproved on an unrelated ground in People v. Stansbury (1995) 9 Cal 4th 824, 830, 38 Cal Rptr.2d 394, 889 P.2d 588.)	Motions in limine permit more careful consideration of evidentiary issues and avoid side-bar conferences and disruptions during trial and allow for uninterrupted flow of evidence, and, by resolving potentially critical issues at outset, enhance efficiency of trials and promote settlements.	"Do motions in limine permit more careful consideration of evidentiary issues and avoid side-bar conferences and disruptions during trial, minimizing side-bar conferences and disruptions during trial and allow for uninterrupted flow of evidence, and, by resolving potentially critical issues at outset, enhance efficiency of trials and promote settlements?"	Prelim Procedure - 001316074	0055-0033160734055-001316074	Condensed, SA	0.79	0	1	0	1	
12	Manhattan Ice & Cold Storage v. City of Manhattan, 294 Kan. 60	307A+3	A district judge "has broad discretion in determining when evidence will be allowed in an eminent domain proceeding." * * * Moore v. City of Overland Park, 283 Kan. 617, 619, 153 P.3d 1252 (2007) (quoting U.S.D. No. 664 v. Porter, 234 Kan. 690, 694, 676 P.2d 84 [1984]). "[A] motion in limine may be granted when a district court finds two factors are present: (1) The material or evidence in question will be inadmissible at a trial; and (2) The material or evidence in question will be prejudicial to the consideration of the issue during the trial might unduly interrupt and delay the trial and inconvenience the jury; or a ruling in advance of trial may limit issues and save the parties time, effort, and cost in trial preparation. (Citation.)" (People v. Stansbury (1995) 9 Cal 4th 824, 830, 38 Cal Rptr.2d 394, 889 P.2d 588.)	A motion in limine may be granted when a district court finds two factors are present: (1) The material or evidence in question will be inadmissible at a trial; and (2) The material or evidence in question will be prejudicial to the consideration of the issue during the trial might unduly interrupt and delay the trial and inconvenience the jury; or a ruling in advance of trial may limit issues and save the parties time, effort, and cost in trial preparation.	Are pretrial grants of a motion in limine justified as opposed to a ruling during the trial because the offer, or mention of evidence during trial may cause unfair prejudice?	024373.docx	LEGALSE-00124440- LEGALSE-00124441	Condensed, SA	0.47	0	1	0	1	
13	In re Mario S., 38 Misc. 3d 24+179	251+179	"[T]o be eligible to petition the federal government for SIU status, the resident alien must be under age 21 and unmarried. The child must have been declared dependent upon a state juvenile court. ... [I]f the juvenile court must have made two additional findings: (1) that reunification with one or both of the immigrant's parents is not viable due to abuse, neglect, or other reasons; and (2) that the child would not be returned to the alien's or parent's previous country of nationality or country of last habitual residence." (J.L.X.C. v. 424 N.Y. 234, 234 S.E.2d 120 [internal citations omitted]; see also, Y.M. at 1915, 144 Cal Rptr.2d 730; Tudy Ann W. at 795, 501 N.Y.2d 639; B.F. at 626, 143 Cal Rptr.2d 730; Tudy Ann W. at 795, 501 N.Y.2d 639; Matter of Emma M., 74 A.D.3d 968, 969, 902 N.Y.S.2d 651 [2010]; Jusun L. at 511, 305 N.Y.2d 635; Alwangir A. at 959, 57 N.Y.2d 805; Mohamed B., 83 A.D.3d 823, 830 N.Y.S.2d 145 [2011].)	Under the current special immigrant juvenile (SIJ) provisions of the Immigration and Nationality Act (INA), in order to be eligible to petition the federal government for SIU status, the resident alien must be under age 21 and unmarried, he or she must have been declared dependent upon a state juvenile court, and the juvenile court must have made two additional findings: (1) that reunification with one or both of the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence. Immigration and Nationality Act, § 101(a)(27)(J). 8 U.S.C.A. § 1101(a)(27)(J).	Does a juvenile court have to make a finding that reunification with one or both of the immigrant's parents is not viable due to abandonment for a person to be eligible for Special Immigrant Juvenile (SIJ) status?	000798.docx	LEGALSE-00160394- LEGALSE-00160395	Order, SA	0.33	1	0	0	1	

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14	Washington Mut. Bank, F.A. v. Shorebank Corp., 267 Mich. App. 111	366+1	Surrogation comes in two forms described by the Supreme Court in Franchise v. Grand Bend Co. as follows: The doctrine of surrogation rests upon the equitable principle that one who, in order to protect a security held by him, is compelled to pay a debt for which another is primarily liable, is entitled to be subordinated in the payment of claims against the debtor with the person to whom such payment is made, without agreement to that effect.	Deduction of "legal subrogation" rests upon the equitable principle that one who, in order to protect a security held by him, is compelled to pay a debt for which another is primarily liable, is entitled to be subordinated in the payment of claims against the debtor with the person to whom such payment is made, without agreement to that effect?	"Does the doctrine of "legal subrogation" rest upon the equitable principle that one who, in order to protect a security held by him, is compelled to pay a debt for which another is primarily liable, is entitled to be subordinated in the payment of claims against the debtor with the person to whom such payment is made, without agreement to that effect?"	04174.docx	LEGALBASE-0021613- LEGALBASE-0021614	Condensed, SA	0.71	839 0	1 1	14,873 0	21,876 1	9,029
15	RAC Home Loan Servicing LP, Burrman, 51 Misc. 3d 770	307A-699	A party in default who opposes a motion for a default judgment may have the default vacated and obtain leave to serve and file a late answer without service of a notice of cross motion seeking leave to attend the time to answer? However, the granting of such relief is dependent upon a demonstration of the elements of a claim for a discretionary excuse for a default on excusable default grounds, namely, a reasonable excuse for the default and a meritorious defense to the action. McKinney's CPLR § 302.60.	Does a party in default who opposes a motion for a default judgment may have the default vacated and obtain leave to serve and file a late answer without service of a notice of cross motion seeking leave to attend the time to answer?	Yes a party in default who opposes a motion for a default judgment may have the default vacated and obtain leave to serve and file a late answer without service of a notice of cross motion seeking leave to attend the time to answer?	02584.docx	LEGALBASE-0015874- LEGALBASE-0015875	SA, Sub	0.54	0	0	1	1	1
16	In re Mario S., 38 Misc. 3d 444	24+179	Under the current special immigrant juvenile (SIJ) provisions of the Immigration and Nationality Act (INA), in order to be eligible to petition the federal government for SIJ status, the resident alien must be under age 21 and unmarried, he or she must have been declared dependent upon a state juvenile court, and the juvenile court must have made two additional findings: (1) that reunification with one or both of the alien's parents in the United States would not be in the alien's best interest, and (2) that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence. Immigration and Nationality Act, § 101(i)(2)(F); 8 U.S.C.A. § 1101(i)(2)(F).	Does a child have to be declared dependent by a state juvenile court in order to be eligible for Special Immigrant Juvenile (SIJ) status?	"Aliens, Immigration and Citizenship - Memo 102 - RK_6474.docx"	ROSS-00281453-ROSS-003281454	Orders, SA, Sub	0.33	1 0	1 0	1	1	1	1
17	Martinez v. United States, 793 F.3d 533	22+164	The rule of non-inquiry bars courts from evaluating the fairness and humanness of another country's criminal justice system, requiring judicial deference to the Executive Branch on such matters. * * Hilton, 744 F.3d at 487-84 (quoting Roussim v. Aty Gen. of United States, 549 F.3d 235, 253 (D.C. Cir. 2008)). This narrow exception to the rule of non-inquiry applies only to habeas corpus proceedings involving humanitarian concerns or a lack of procedural rights in a foreign criminal justice system. See Hilton, 754 F.3d at 83; Roussim, 549 F.3d at 253; Prasoprat v. Benow, 421 F.3d 1009, 1016-17 (9th Cir. 2005); Ahmad v. Wajen, 930 F.2d 1063, 1067 (2d Cir. 1990); see also Gluckman v. Henkel, 221 U.S. 508, 512, 31 S.Ct. 704, 705 L.Ed. 890 (1931) ("We are bound by the existence of an extradition treaty to assume that the trial will be fair"). Conty principles cannot broaden the authority to assess beyond the terms of the treaty. Tucker, 483 U.S. at 436, 122 S.Ct. 1935.	The rule of non-inquiry bars courts from evaluating the fairness and humanness of another country's criminal justice system, requiring judicial deference to the Executive Branch on such matters. * * Hilton, 744 F.3d at 487-84 (quoting Roussim v. Aty Gen. of United States, 549 F.3d 235, 253 (D.C. Cir. 2008)). This narrow exception to the rule of non-inquiry applies only to habeas corpus proceedings involving humanitarian concerns or a lack of procedural rights in a foreign criminal justice system.	"Does the rule of non-inquiry bar courts from evaluating the fairness and humanness of another country's criminal justice system, requiring judicial deference to the Executive Branch on such matters. * * Hilton, 744 F.3d at 487-84 (quoting Roussim v. Aty Gen. of United States, 549 F.3d 235, 253 (D.C. Cir. 2008)). This narrow exception to the rule of non-inquiry applies only to habeas corpus proceedings involving humanitarian concerns or a lack of procedural rights in a foreign criminal justice system?"	International Law - Memo # 210 - C - ILS.docx	ROSS-003282946-ROSS-003282948	Condensed, SA	0.74	0	1	0	1	1
18	Miller v. Marina Mercy Hosp., 157 Cal. App. 3d 765	307A-483	Appellants also challenge the trial court's denial of their 473 motion (or relief from their failure to respond to the request for admissions). The determination of a 473 motion is within the sound discretion of the trial court, and its decision need not be disturbed on appeal without a clear showing of abuse; even if appellate court may have ruled otherwise in allowing of abuse, the trial court's ruling was not manifestly erroneous. Cal.Rptr. 436; Martinez v. Cook (1977) 18 Cal.App.3d 999, 807, 137 Cal.Rptr. 434. Even if the appellate court might have ruled otherwise in the first instance, there is no reversal unless, as a matter of law, the trial court's decision is not supported by the record. [Coyne v. Kempels (1950) 36 Cal.2d 257, 263, 223 P.2d 244; Martin v. Johnson, supra, 88 Cal.App.3d at p. 604, 151 Cal.Rptr. 816].	Determination of motion for relief from deemed admissions due to failure to respond to request for admissions is within sound discretion of trial court, and court's decision will not be disturbed on appeal without a clear showing of abuse; even if appellate court may have ruled otherwise in allowing of abuse, the trial court's ruling was not manifestly erroneous. Appellate court's decision is not supported by record. West's An Cal C.C.P. § 473.	Pretial Procedure - Memo # 4173 - C - S&G.docx	ROSS-003289986-ROSS-003289987	Orders, SA, Sub	0.43	1 0	1 0	1	1	1	1

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28	United States v. All Assets Held in Account No. XXXXXXXX, 83 F. Supp. 3d 1360	221+342	Along similar lines, "[t]he act of state doctrine precludes the courts of this country from inquiring into the validity of the public acts of a recognized foreign sovereign power committed within its own territory." <i>Mission Corp. v. Islamic Rep. of Iran</i> , 539 F.3d 485, 491 (D.C. Cir.2008) (internal quotation marks omitted). Hence, the act of state doctrine "is applicable when 'the relief sought or the defense interposed would require a court in the United States to declare invalid the official act of a foreign sovereign performed within' its boundaries." <i>World Wide Minerals, Ltd. v. Rep. of Kazakhstan</i> , 296 F.3d 1154, 1164 (5 (D.C. Cir.2002) (quoting <i>W.S. Kipparick & Co. v. Evrd. Tectonics Corp.</i> , 493 U.S. 400, 405, 110 S.Ct. 1101, 107 L.Ed.2d 816 (1990)). "One of the major concerns underlying the act of state doctrine is "the strong sense of the judicial branch that its engagement in the task of passing on the validity of foreign acts of a state may hinder rather than further this country's pursuit of goals both for itself and for the community of nations as a whole in the international sphere." <i>One Gulfstream</i> , 941 F.Supp.2d at 11-12 (quoting <i>Banco Nacional de Cuba v. Sabbatino</i> , 376 U.S. 398, 423, 84 S.Ct. 923, 11 L.Ed.2d 804 (1964)).	One of the major concerns underlying the act of state doctrine is the strong sense of the judicial branch that its engagement in the task of passing on the validity of foreign acts of a state may hinder rather than further this country's pursuit of goals both for itself and for the community of nations as a whole in the international sphere?	015683.docx	LEGALASE-00123602-LEGALASE-00123604	Condensed, SA	0.73	839 0	15,344 0	14,873 0	21,876 1	9,029	
29	Prestinback v. Hearn, 85 So. 3d 236	307A+481	Article 561 was designed to prevent protracted litigation filed for purposes of harassment or without a serious intent to hasten the claim to judgment. See <i>Chevron Oil Co. v. Traigle</i> , 436 So.2d 530, 532 (La.1983). Dismissal for abandonment is not intended to be punitive; rather, it balances two competing policy considerations: (1) the desire to see every litigant have his day in court without the risk of losing same due to technical carelessness or unavoidable delay; and (2) the legislative purpose that suits, once filed, should not linger indefinitely, preserving state claims from the normal extinguishing operation of prescription. <i>La. C.C.P. art. 561</i> .	Dismissal for abandonment is not intended to be punitive; rather, it balances two competing policy considerations: (1) the desire to see every litigant have his day in court without the risk of losing same due to technical carelessness or unavoidable delay; and (2) the legislative purpose that suits, once filed, should not linger indefinitely, preserving state claims from the normal extinguishing operation of prescription. <i>La. C.C.P. art. 561</i> .	"Is the legislative purpose for a suits dismissal for abandonment which is not intended to be punitive that suits once filed, should not linger indefinitely preserving state claims from the normal extinguishing operation of prescription?"	036676.docx	LEGALASE-00150137-LEGALASE-00150138	SA, Sub	0.4	0 0	0 0	1 1	1	
30	GMS Mine Repair & Maint. v. Mikov, 798 S.E.2d 833	307A+747.1	In short, the case at bar presents a clear example of a situation where the parties would have benefited had the circuit court simply undertaken its managerial role that is mandated by our Rules of Civil Procedure. See <i>Caruso</i> , 223 W.Va. at 546, 678 S.E.2d 452, 91, pt. 2 ("Rule 16(b) of the West Virginia Rules of Civil Procedure [1998] requires active judicial management of a case, and mandates that a trial court" shall "... enter a scheduling order" establishing time frames for the joinder of parties, the amendment of pleadings, the completion of discovery, the filing of dispositive motions, and generally guiding the parties toward a prompt, fair and cost-effective resolution of the case." Indeed, "[t]he absence of a fair and cost-effective resolution of the case," indeed, "[t]he absence of a Rule 16(b) scheduling order" can result in lack of focus, inefficiency, and increased costs to the parties. See, e.g., <i>West Virginia Rules of Civil Procedure Edition</i> " 16-10(2)". <i>Caruso</i> , 223 W.Va. at 549, 678 S.E.2d at 55.	The civil procedure rules require active judicial management of a case, and mandate that a trial court shall enter a scheduling order establishing time frames for the joinder of parties, the amendment of pleadings, the completion of discovery, the filing of dispositive motions, and generally guiding the parties toward a prompt, fair and cost-effective resolution of the case. W. Va. R. Civ. P. 16(b).	"Does the Civil Procedure Rule governing scheduling orders require active judicial management of a case, and mandates that a trial court enter a scheduling order establishing time frames for the joinder of parties?"	036698.docx	LEGALASE-00130017-LEGALASE-00130018	Order, SA	0.57	1 0	0 0	0 0	1 1	
31	Wilson v. John Crane, 383 Md. 185	307A+486	Moreover, in reaching any decision regarding withdrawal or amendment of admissions in relation to allegedly inadvertent admissions, it is imperative that courts consider whether the party seeking the withdrawal or amendment has acted with due diligence; courts should not be so certain whether the alleged party was diligent in its discovery of the error as to deem its response to a valid request for admissions. Md. Rule 2-424(d). See <i>Branch Banking</i> , 120 F.3d at 660 (federal district court, in explaining why it declined to permit withdrawal of admission, stating that the record disclosed "no reason why defendants, with due diligence, could not have [timely] denied plaintiff's request ... or, if they were uncertain of how to respond, state the reasons why they could not truthfully admit or deny the matter at that time") (alteration added).	In reaching any decision regarding withdrawal or amendment of deemed admissions in relation to allegedly inadvertent admissions, it is imperative that courts consider whether the party seeking the withdrawal or amendment has acted with due diligence; courts should not be so certain whether the alleged party was diligent in its discovery of the error as to deem its response to a valid request for admissions?"	"In reaching any decision regarding withdrawal or amendment of deemed admissions in relation to allegedly inadvertent admissions, is it imperative that courts consider whether the party seeking the withdrawal or amendment has acted with due diligence; courts should not be so certain whether the alleged party was diligent in its discovery of the error as to deem its response to a valid request for admissions?"	Perital Procedure - Memo # 2317 - C - ES.docx	R055-00331602-R055-00331603	SA, Sub	0.51	0 0	0 0	1 1	1	
32	Reeves v. Travelers Ins. Companies, 421 A.2d 47	307A+747.1	In exercising its discretion under Rule 16(d) or 37(b)(2), the trial court must answer three questions: (1) Whether to impose a sanction; (2) upon whom party or counsel or both to impose the sanction; and (3) what sanction to impose. The answers to those questions depend upon the circumstances of the particular case, viewed in the light of the functions intended to be served by sanctions. In addition to penalizing noncompliance with a court order and trying to remedy the effect of the noncompliance, sanctions should also serve as a deterrent to similar conduct by the same offender or others. See Note, "The Emerging Deterrence Orientation in the Imposition of Discovery Sanctions," 91 Harv. L.Rev. 1033, 1034 (1978). The ultimate goal of any pretrial sanction is to promote fair and efficient litigation, both in the pending case and in the court system generally. Based with the increasingly heavy demands upon courts to manage their dockets, all courts more closely scrutinize the necessity for strict order and the propriety of their orders. Id. at 1035. An appellate court will not lightly overrule a trial court's judgmental choice of an appropriate sanction under Rule 16(d) or 37(b)(2).	In addition to penalizing noncompliance with court order and trying to remedy effect of noncompliance by compensating innocent party for costs incurred thereby or by extracting party, sanction selected for failure to comply with pretrial order or failure to comply with discovery should also serve as a deterrent to similar conduct by same offender or others. Rules of Civil Procedure, Rules 16(d), 37(b)(2).	"In addition to penalizing noncompliance with court order and trying to remedy effect of noncompliance by compensating innocent party for costs incurred thereby or by extracting compliance from realicitant party, sanction selected for failure to comply with pretrial order or failure to comply with discovery should also serve as a deterrent to similar conduct by same offender or others. Rules of Civil Procedure, Rules 16(d), 37(b)(2).	Perital Procedure - Memo # 2118 - C - ES.docx	R055-00331602-R055-00331603	SA, Sub	0.67	0 0	0 0	1 1	1	

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33	Worth v. Comm'r of Transp., 135 Conn. App. 536	307A+683	"If the complaint is supplemented by undisputed facts established by affidavits submitted in support of the motion to dismiss other types of undisputed evidence, and/or public records of judicial opinion, which are relevant to the legal issue, consider these supplementary undisputed facts and need not conclusively presume the validity of the allegations of the complaint. Rather, those allegations are tempered by the light shed on them by the supplementary undisputed facts. If affidants and/or other evidence submitted in support of a defendant's motion to dismiss conclusively establish that jurisdiction is lacking, and the plaintiff fails to undermine this conclusion with counter-evidence, or other evidence," the trial court must grant the motion to dismiss. See, e.g., <i>Conroy v. State</i> , 292 Conn. 642, 651-52, 974 A.2d 863 (2009).	On a motion to dismiss, if the complaint is supplemented by undisputed facts established by affidavits submitted in support of the motion to dismiss, other types of undisputed evidence, and/or public records of judicial opinion, may consider these supplementary undisputed facts and need not conclusively presume the validity of the allegations of the complaint. Rather, those allegations are tempered by the light shed on them by the supplementary undisputed facts.	"If the complaint is supplemented by undisputed facts established by affidavits submitted in support of the motion to dismiss, can other types of undisputed evidence and/or public records of judicial opinion be taken?"	038060.docx	LEGALASE-00153207- LEGALASE-00153208	SA, Sub	0.42	839 0	15,344 0	14,873 1	21,876 1	9,029
	Ham v. Dumire, 891 So. 2d 492	307A+46	Moreover, to ensure that a litigant is not unduly punished for failure of counsel, the trial court must consider whether dismissal with prejudice is warranted. In 1994, this Court issued <i>Knox v. Overland</i> , 629 So.2d 817 ("Knox"). Therein, the Court stated that "dismissal with prejudice is warranted only in the absence of a showing that the attorney has been ineffectually sanctioned." The litigant "espouses a policy that this Court does not wish to promote." Id. at 838. We articulated a test identifying six factors pertinent in the determination of whether a dismissal with prejudice is a warranted response to an attorney's behavior. These factors require a trial court to consider: (1) whether the attorney's disobedience was willful, deliberate, or conscious; rather than an act of neglect or incompetence; (2) whether the attorney acted in bad faith; (3) whether the attorney's conduct was personally prohibited in the set of discipline; (4) whether the delay prejudiced the opposing party through undue expense, loss of evidence, or in some other fashion; (5) whether the attorney offered reasonable justification for noncompliance; and (6) whether delay created significant problems of judicial administration.	Knox factors for determining whether dismissal with prejudice is warranted response to attorney's behavior that violates discovery order require trial court to consider: (1) whether attorney's disobedience was willful, deliberate, or conscious; rather than an act of neglect or incompetence; (2) whether attorney acted in bad faith; (3) whether attorney has been ineffectually sanctioned; (4) whether client was personally involved in the act of disobedience; (5) whether delay prejudiced opposing party through undue expense, loss of evidence, or in some other fashion; (6) whether attorney offered reasonable justification for noncompliance; and (6) whether delay created significant problems of judicial administration.	What is the six factor analysis to determine whether dismissal with prejudice for non-compliance with a court order is warranted where the failure was attributable to the attorney?	024967.docx	LEGALASE-00157287- LEGALASE-00157288	SA, Sub	0.51	0	0	1	1	
34	Colvin v. Sheets, 598 F.3d 242	139H+95.1	The Double Jeopardy Clause of the Fifth Amendment provides that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb." U.S. Const. amend V. It applies to the States via the Fourteenth Amendment. 393 U.S. 309, 313, 1969. The Double Jeopardy Clause "prohibits a defendant against governmental actions intended to provide minimal requests and thereby to subject defendants to the substantial burdens imposed by multiple prosecutions." United States v. Dinitz, 424 U.S. 600, 611, 96 S.Ct. 1075, 47 L.Ed.2d 267 (1976). It also protects a defendant's "valued right to have his trial completed by a particular tribunal." Wade v. Hunter, 336 U.S. 659, 689-69 S.Ct. 834, 93 S.Ct. 974 (1949). At the same time, it does not protect a defendant's "valued right to demand a speedy discharge a jury before a trial is concluded, and because those circumstances do not invariably create unfairness to the accused, his valued right to have the trial concluded by a particular tribunal is sometimes subordinate to the public interest in affording the prosecutor one full and fair opportunity to present his evidence to an impartial jury."	The double jeopardy clause of the Fifth Amendment protects a defendant's valued right to have his trial completed by a particular tribunal, at the same time, given the variety of circumstances that may exist, the Double Jeopardy Clause does not inevitably create unfairness to the accused, a defendant's valued right to have the trial concluded by a particular tribunal is sometimes subordinate to the public interest in affording the prosecutor one full and fair opportunity to present his evidence to an impartial jury. U.S.C.A. Const.Amend. 5, 4.	Is a defendant's valued right to have the trial concluded by a particular tribunal sometimes subordinate to the public interest in affording the prosecutor one full and fair opportunity to present his evidence to an impartial jury?	015401.docx LEGALASE-00163329- LEGALASE-00163330	SA, Sub	0.62	0	0	1	1		
	In re Taylor, 209 B.R. 482	349A+10	Feel free to see, in <i>Stevens</i> , No. 97-31144, Adv. No. 97-3061, slip op. at 2 (<i>Bankr. E.D. N.Y.</i> , 11, 1992), that in this case, there is no dispute between the parties as to the material facts. Therefore, the Court can proceed to analyze the agreement in light of the following factors to determine whether the economics of the transaction indicate a security agreement rather than a "true lease": (1) whether the lessee has the option to renew the lease or to become the owner of the property; (2) whether the debtor is responsible for payment of taxes, insurance and other costs incident to ownership; and (q) whether the useful life of the property exceeds the length of the term of the lease.	Under Illinois law, in determining whether economics of a transaction indicate a security agreement rather than true lease, court will consider whether lessee has option to renew lease or to become owner of property, whether amount of rent exceeds fair market value of property, whether debtor is responsible for payment of taxes, insurance and other costs incident to ownership, and whether useful life of property exceeds length of term of lease. 3rd Cir. 810 U.S. 572-2015 (9).	"In determining whether the economics of a transaction indicate a security agreement rather than true lease, will a court consider whether a lessee has an option to renew a lease or to become owner of property?"	042732.docx	LEGALASE-00162673- LEGALASE-00166752	SA, Sub	0.39	0	0	1	1	
35														
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37	Hamlet at Willow Creek Dev. Co. v. Ne Land Dev. Corp., 644 O.3d 85	366+26	The Hamlet's final attempt to establish a contract claim against Pav'Co is based upon Pav'Co's liability to the Town under the payment and performance bonds. Although The Hamlet is not a party to those bonds, it asserts that, having paid to the Town the environmental fund fees and engineering costs guaranteed by the bonds, it is entitled, as the equitable subrogee of the Town, to recover from Pav'Co the funds it has paid to the Town. Although The Hamlet's argument is a novel one, we conclude that it is meritorious and that The Hamlet is entitled to judgment against Pav'Co on this ground. The doctrine of equitable subrogation, "is broad enough to include every instance in which one party pays a debt for another, and the payment is made either under compulsion or protection of some interest of payer, and in discharge of existing liability." (Gerseta Corp. v. Equitable Trust Co. of N.Y., 241 N.Y. 418, 425-426, 150 N.E. 501; see National Granite Tr. Ins. Agency v. Cadillacrock Props. Joint Venture, 5 A.D.3d 341, 362, 773 N.Y.S.2d 86)	Doctrine of equitable subrogation includes every instance in which one party is paid for which another is primarily answerable, and which in equity and good conscience should have been discharged by the latter, so long as payment was made either under compulsion or protection of some interest of payer, and in discharge of existing liability.	"Does the doctrine of equitable subrogation include every instance in which one party pays a debt for which another is primarily answerable, and which in equity and good conscience should have been discharged by the latter, so long as payment was made either under compulsion or protection of some interest of payer, and in discharge of existing liability?"	Subrogation - Memo 329 - RM C.docx	R055-00328-493-R055-00328-504	Condensed, SA	0.72	839	15,344	14,873	21,876	9,029
38	Ellas v. Bolling Stone LLC, 192 F. Supp. 3d 383	237+6(1)	In discerning whether a statement is a fact or opinion, for purposes of determining whether the statement is actionable as defamation, New York law considers a non-exclusive list of factors that include: (1) an assessment of whether the specific language in issue has a precise meaning which is readily understood or whether it is indefinite and ambiguous; (2) a determination of whether the statement is capable of being objectively characterized as true or false; (3) an examination of the full context of the communication in which the statement appears, and (4) a consideration of the broader social context or setting surrounding the communication including the existence of any applicable customs or conventions which might signal to readers or listeners that what is being read or heard is likely to be opinion, not fact.	How do courts distinguish between fact and opinion?	Ubel and Slander - Memo 193 - BP.docx	R055-00328-360-R055-00328-502	1	SA, Sub	0.5	0	0	1	1	1
39	Warfaa v. Ali, 33 F. Supp. 3d 653	22+1+42	Even if defendant could make the required two-part showing, the Court would still have discretion not to apply the act of state doctrine where the underlying policies weigh against its application. The Supreme Court articulated three such policies in Sabbatini: (1) [T]he greater the degree of codification or consensus concerning a particular area of international law, the more likely it is that the act should be considered a political branch; (2) [T]he less important the implications of an issue are for our foreign relations, the weaker the justification for exclusivity in the political branches; and (3) the balance of relevant considerations may also be shifted if the government which perpetrated the challenged act of state is no longer in existence.	There are three policies guiding a court's discretion in determining whether the act of state doctrine applies to prevent a federal court from inquiring into the validity of the public acts of a recognized foreign sovereign power committed within its own territory: (1) the greater the degree of codification or consensus concerning a particular area of international law, the more likely it is that the act should be considered a political branch; (2) the less important the implications of an issue are for our foreign relations, the weaker the justification for exclusivity in the political branches; and (3) the balance of relevant considerations may also be shifted if the government which perpetrated the challenged act of state is no longer in existence.	"To determine whether the act of state doctrine applies, do courts consider three factors?"	020249.docx	LEGAL-00124067-LEGAL-00124068	Condensed, SA, Sub 0	0	1	1	1	1	
40	Geophysical Serv. v. TGS-NOPEC Offshore, 850 F.3d 785	22+1+42	The act of state doctrine "limits, for prudential rather than jurisdictional reasons, the ability of private parties to sue in federal court for a violation of a sovereign's public acts, and thus the doctrine applies to bar an action when the relief sought or the defense interposed would have required a court in the United States to declare invalid the official act of a foreign sovereign performed within its own territory." Though seemingly international in character, the doctrine is founded in concerns of domestic separation of powers, "reflecting the strong sense of the judicial branch that its engagement in the task of passing on the validity of foreign acts of state would be inconsistent with the traditional role of the executive branch when a court must decide that is, when the outcome of the case turns upon "the effect of official action by a foreign sovereign." It can apply "even if the defendant is a private party, not an instrumentality of a foreign state, and even if the suit is not based specifically on a sovereign act."	"Under the act of state doctrine, may a legal action be barred if the relief sought or the defense interposed would have required a court in the United States to declare invalid the official act of a foreign sovereign performed within its own territory?"	LEGAL-00124272-LEGAL-00124278	020247.docx	1	Condensed, SA, Sub 0.42	0	1	1	1	1	
41	Homer v. Hanks, 22 Ark. 572	150+187	The right of a plaintiff must be adjudicated upon as it existed at the time of the filing of his bill; and if he has a good cause of action, which had not then accrued, the bill cannot be maintained. And it would seem that a court of chancery would not allow a defendant to modify the relief to which the plaintiff was entitled when the suit was begun, by setting up as a defense a change of circumstances produced by the use of legal process or remedies after he is brought into court. So, if the defendant has a judgment against the plaintiff when the bill is filed, his case is not strengthened by a subsequent sale and purchase of the property in dispute under such judgment.	The right of a plaintiff must be adjudicated upon as it existed at the time of the filing of his bill; and if he has a good cause of action, which had not then accrued, the bill cannot be maintained. And it would seem that a court of chancery would not allow a defendant to modify the relief to which the plaintiff was entitled when the suit was begun, by setting up as a defense a change of circumstances produced by the use of legal process or remedies after he is brought into court. So, if the defendant has a judgment against the plaintiff when the bill is filed, his case is not strengthened by a subsequent sale and purchase of the property in dispute under such judgment.	Must the right of a plaintiff be adjudicated upon as it existed at the time of filing of his bill?	000010.docx	LEGAL-00128379-LEGAL-00128380	1	Condensed, SA, Sub 0	0	1	1	1	1
42	Shoenaker v. Johnson, 241 Or. 511	85+12	In passing the Workmen's Compensation Act the common-law concept of tort liability through the fault concept and vicarious liability was abolished to serve the present-day needs of society by providing a means whereby an employee was guaranteed a monetary recovery, medical care and a hope of rehabilitation, and to avoid the "great and unnecessary cost incurred in litigation." ORS 656.004.	Workmen's Compensation Act abolished common-law concept of tort liability through fault concept and vicarious liability and provided means to guarantee employee monetary recovery, medical care, and a hope of rehabilitation and means to avoid great and unnecessary cost incurred in litigation. ORS 656.004.	"Did the Workmen's Compensation Act abolish the common-law concept of tort liability through fault and vicarious liability, as well as provide a means to guarantee employee monetary recovery, medical care, and a hope of rehabilitation and means to avoid great and unnecessary cost incurred in litigation?"	047865.docx	LEGAL-00132925-LEGAL-00132926	1	Condensed, SA, Sub 0.22	0	1	1	1	1

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43	Rautenberg v. Fair, 139 So. 3d 724	307A-554	In considering a motion to dismiss for lack of personal jurisdiction, the trial court must determine whether the complaint alleges sufficient facts to bring the case within the ambit of the long-arm statute. If it does, the next inquiry is whether sufficient minimum contacts are demonstrated to satisfy due process requirements." Wiggins, 147 So.3d 84 (quoting Borden v. East European Inc. Co., 911 So.2d 587, 592 (Fla. 2006)).	In considering a motion to dismiss for lack of personal jurisdiction, the trial court must determine whether the complaint alleges sufficient facts to bring the case within the ambit of the long-arm statute. If it does, the next inquiry is whether sufficient minimum contacts are demonstrated to satisfy due process requirements. U.S.C.A. Const. Amend. 14; West's f.S.A. 5.48.193.	"In considering a motion to dismiss for lack of personal jurisdiction, the trial court must determine whether the complaint alleges sufficient facts to bring the case within the ambit of the long-arm statute?"	032747.docx	LEGALBASE-00139723-LEGALBASE-00139724	Condensed, SA	0.3	839 0	15,344 0	14,873 0	21,876 1	9,079
44	Miller v. Nimes, 946 So. 2d 437	307A-563	The court has previously demonstrated that a complaint arises when it is clearly and convincingly demonstrated that a party has seriously set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier of fact or unfairly hampering the presentation of the opposing party's claim or defense."	A fraud that was partly, dismissal of a complaint arises when it is clearly and convincingly demonstrated that a party has seriously set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier of fact or unfairly hampering the presentation of the opposing party's claim or defense.	Does a fraud that warrants dismissal of a complaint arise when it is clearly and convincingly demonstrated that a party has seriously set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier of fact or unfairly hampering the presentation of the opposing party's claim or defense?	Perital Proceedings - Memo 17052 - C - PC_58306.docx	ROSS-00328468-ROSS-00328470	Condensed, SA	0.76	0	1	0	1	
45	Newdow v. Rici Linda Union Sch. Dist., 507 F.3d 1007	141E-724	Pledge of Allegiance, including words, "one Nation under God," as voluntarily recited by public school children, pursuant to school district's policy that implemented California statute requiring school day to begin with patriotic exercise that was fulfilled by teacher-led recitation of Pledge, did not violate Establishment Clause, under coercion test, even though students were coerced to listen to other students recite Pledge and could even feel induced to recite Pledge themselves, since students were not required to recite Pledge themselves, and no evidence that U.S.C.A. Const. Amend. 1:4 U.S.C.A. "4," West's Ann.Cal.Educ.Code § 52720. The Pledge is not a prayer and its recitation is not a religious exercise.	Pledge of Allegiance, including words, "one Nation under God," as voluntarily recited by public school children, pursuant to school district's policy that implemented California statute requiring school day to begin with patriotic exercise that was fulfilled by teacher-led recitation of Pledge, did not violate Establishment Clause, under coercion test, even though students were coerced to listen to other students recite Pledge and could even feel induced to recite Pledge themselves, since students were not required to recite Pledge themselves, and no evidence that U.S.C.A. Const. Amend. 1:4 U.S.C.A. "4," West's Ann.Cal.Educ.Code § 52720. The Pledge is not a prayer and its recitation is not a religious exercise.	Does requiring students in public school to voluntarily recite the pledge of allegiance violate the Establishment Clause?	017093.docx	LEGALBASE-00153728-LEGALBASE-00153729	Condensed, SA, Sub	0.1	0	1	1	1	1
46	Westport Ins. v. St. Paul Fire & Marine Ins. Co., 375 F. Supp. 2d 4	366-1	Equitable subrogation is "the mode which equity adopts to compel the ultimate payment of a debt by one who, in justice, equity, and good conscience, should pay it." Westchester Fire Ins. Co. v. Allstate Ins. Co., 608 S.W.2d 671, 674 (Mo. 1981) (quoting Marks v. Commonwealth of Massachusetts, 359 U.S. 183, 187 (1959) (quotation marks omitted). This doctrine "is broad enough to include every instance in which one person, not acting as a mere volunteer or intruder, pays a debt for which another is primarily liable, and which is equity and good conscience should have been discharged by the latter." Id. (citations and internal quotation marks omitted); see also First Tasting Dist. v. Nat'l Surety Co., 97 Conn. 639, 642, 118 A. 96 (1922) (doctrine covers "one who, not as a volunteer or in his own wrong and where there are no outstanding superior equities, pays the debt of another, is treated in equity as still existing for his benefit"). Thus in Westchester Fire, the Connecticut Supreme Court permitted an uninsured motorist insurance carrier that paid uninsured motorist benefits to its insured to bring a subrogation action against the tortfeasor's liability insurer who was alleged to have wrongfully denied coverage of the insured's claim against the tortfeasor. In Westchester Fire, as here, the insured was fully compensated and suffered no loss, and one insurer, as subrogee, sought reimbursement for payments that were alleged to be covered by another insurer.	Under Connecticut law, equitable subrogation is the mode which equity adopts to compel the ultimate payment of a debt by one who, in justice, equity, and good conscience, should pay it. This doctrine is broad enough to include every instance in which one person, not acting as a mere volunteer or intruder, pays a debt for which another is primarily liable, and which is equity and good conscience should have been discharged by the latter.	"Does equitable subrogation include every instance in which one person, not acting as a mere volunteer or intruder, pays a debt for which another is primarily liable, and which in equity and good conscience should have been discharged by the latter?"	Subrogation - Memo 1721 - C - NO.docx	ROSS-00328452-ROSS-00328454	SA, Sub	0.71	0	0	1	1	

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47	United States v. One Gulfstream G V Jet Aircraft, 941 F. Supp. 2d 1	221+342	There are two reasons why the doctrine does not bar this lawsuit. First, the applicability of this doctrine is weakened when the Executive Branch of the United States is the party that brings suit. One of the major concerns underlying the act of state doctrine is "the strong sense of the judicial branch that its engagement in the task of passing on the validity of foreign acts of a state may hinder rather than further the United States' pursuit of goals both for itself and for the community of nations as a whole in the international sphere; therefore, the Executive Branch brings suit, the doctrine's rationale no longer applies." <i>Id.</i> <i>See</i> also, <i>United States v. Sabatino</i> , 376 U.S. at 423, 84 S.Ct. 923, 41 United States v. Curtis Wright Export Corp., 299 U.S. 304, 320, 57 S.Ct. 216, 81 L.Ed. 255 (1936) ("The Executive Branch is "the sole organ of the federal government in the field of international relations."") When the Executive Branch brings suit, therefore, the doctrine's rationale no longer applies. United States v. One Bickel Vory, Tuck of African Elephant, 941 F. Supp. 2d 1. The court's rationale for applying the act of state doctrine has brought suit, clearly the court need not worry that it will intrude into an area that the executive branch does not want it, or that the court's action will hinder its administration of its foreign affairs power"). United States v. Lazarenko, 504 F.Supp.2d at 802 (concluding that the act of state did not apply where the government brought suit, as a judicial consideration of the matter would not "embarrass or hinder the executive in the realm of foreign relations" (citing <i>Biglow</i> , Court Civil Co., 941 F. Supp. 2d 1. <i>See</i> also, <i>United States v. Sabatino</i> , 376 U.S. at 423, 84 S.Ct. 923, 41 United States v. Curtis Wright Export Corp., 299 U.S. 304, 320, 57 S.Ct. 216, 81 L.Ed. 255 (1936) ("The Executive Branch is "the sole organ of the federal government in the field of international relations."") When the Executive Branch brings suit, therefore, the doctrine's rationale no longer applies. United States v. One Bickel Vory, Tuck of African Elephant, 941 F. Supp. 2d 1. The court's rationale for applying the act of state doctrine is the policy of forbidding court adjudications involving the legality of acts of foreign states on their own soil that might embarrass the Executive Branch of our Government in the conduct of our foreign relations. Where the Executive Branch files an action, however, courts are reluctant to invoke the act of state doctrine as a bar to the lawsuit.")	One of the major concerns underlying the "act of state doctrine" is the strong sense of the judicial branch that its engagement in the task of passing on the validity of foreign acts of a state may hinder rather than further the United States' pursuit of goals both for itself and for the community of nations as a whole in the international sphere; therefore, the Executive Branch brings suit, the doctrine's rationale no longer applies.	Is one of the major concerns underlying the act of state doctrine the sense of the judicial branch that its engagement in the task of passing on the validity of foreign acts of a state may hinder rather than further the United States' pursuit of goals both for itself and for the community of nations as a whole in the international sphere?	International Law - Memo # 89 - C - K.docx	ROSS-00324310-ROSS-00324311	SA, Sub	0.78	839 0	15,344 0	14,873	21,876	9,029
48	McCullough v. Spitzer, 341 F.3d 530	307A+3	In violation of App.X, 35(4)(7), plaintiff has failed to cite any authority to support its contention that the act of state doctrine bars its lawsuit. The doctrine regarding the cost of repairs at trial. As this court in <i>Collins v. Stoner Communications, Inc.</i> (1989), 65 Ohio App.3d 443, 446, 584 N.E.2d 766, 767-768, stated: "A motion in limine, if granted, is a tentative, interlocutory, precautionary ruling by the trial court reflecting its anticipatory treatment of the evidentiary issue." <i>Stare v. Grubb</i> (1986), 28 Ohio St.3d 193, 201, 28 OBR 285, 288, 503 N.E.2d 142, 145. Accordingly, a proponent who has been temporarily restricted from introducing evidence by a court's ruling in limine is not required to make a final determination as to its admissibility and to preserve any objection on the record for purposes of appeal. <i>Id.</i> at paragraph two of the syllabus." <i>See, also</i> , <i>Sutherland v. Nationwide Gen. Ins. Co.</i> (1994), 96 Ohio App.3d 793, 812, 645 N.E.2d 1388, 1351-1352; <i>Gibson v. Gibson</i> (1993), 87 Ohio App.3d 426, 430, 622 N.E.2d 425, 427-428; <i>Brenton v. Chappell</i> (1990), 66 Ohio App.3d 83, 87, 583 N.E.2d 434, 436-437.	Motion in limine, if granted, is tentative, interlocutory, precautionary ruling by the trial court reflecting its anticipatory treatment of the evidentiary issue. Accordingly, proponent who has been temporarily restricted from introducing evidence by virtue of motion in limine must seek introduction of evidence by proffer or otherwise at trial to enable court to make final determination as to its admissibility and to preserve any objection on record for purposes of appeal?	Must a proponent, who has been temporarily restricted from introducing evidence by virtue of motion in limine, seek introduction of evidence by proffer or otherwise at trial to enable court to make final determination as to its admissibility and to preserve any objection on record for purposes of appeal?	Preltrial Procedure - Memo # 642 - C - Rv.docx	ROSS-00324602-ROSS-00324608	Condensed, SA	0.62	0	1	0	1	1
49	Manhattan Ice & Cold Storage v. City of Manhattan, 294 Kan. 60	307A+3	A district judge "has broad discretion in determining what evidence will be allowed in an eminent domain proceeding. . . . Mooney v. City of Overland Park, 283 Kan. 617, 619, 153 P.3d 1232, 1237 (quoting U.S.D. No. 464 v. Porter, 234 Kan. 690, 694, 976 P.2d 884 (1984))." A motion in limine may be granted when a district court finds two factors are present: (1) the material or evidence in question will be inadmissible at trial; and (2) the pretrial ruling is justified as opposed to a ruling during trial because the more effort or mention of the evidence during trial may cause unfair prejudice, confuse the issues, or mislead the jury. (2) The pretrial ruling is justified as opposed to a ruling during trial because the mere effort or mention of the evidence during trial may cause unfair prejudice, confuse the issues, or mislead the jury; the consideration of the issue during the trial might unduly interrupt and delay the trial and inconvenience the jury; or a ruling in advance of trial may limit issues and save the parties time, effort, and cost in trial preparation. In determining if a pretrial ruling is justified a district court should weigh whether the material or evidence in question will be inadmissible at trial, the probability of evidence and its potential prejudice." <i>State v. Shadden</i> , 290 Kan. 803, 816, 235 P.3d 436 (2010).	A motion in limine may be granted when a district court finds two factors are present: (1) the material or evidence in question will be inadmissible at trial; and (2) the pretrial ruling is justified as opposed to a ruling during trial because the more effort or mention of the evidence during trial may cause unfair prejudice, confuse the issues, or mislead the jury; the consideration of the issue during the trial might unduly interrupt and delay the trial and inconvenience the jury; or a ruling in advance of trial may limit issues and save the parties time, effort, and cost in trial preparation.	When the court finds evidence inadmissible at trial should it grant a motion in limine?	Preltrial Procedure - Memo # 642 - C - 558.docx	LEGALASE-00015027-LEGALASE-00015028	Condensed, SA	0.47	0	1	0	1	1
50	Manhattan Ice & Cold Storage v. City of Manhattan, 294 Kan. 60	307A+3	A district judge "has broad discretion in determining what evidence will be allowed in an eminent domain proceeding. . . . Mooney v. City of Overland Park, 283 Kan. 617, 619, 153 P.3d 1232, 1237 (quoting U.S.D. No. 464 v. Porter, 234 Kan. 690, 694, 976 P.2d 884 (1984))." A motion in limine may be granted when a district court finds two factors are present: (1) the material or evidence in question will be inadmissible at trial; and (2) the pretrial ruling is justified as opposed to a ruling during trial because the more effort or mention of the evidence during trial may cause unfair prejudice, confuse the issues, or mislead the jury; the consideration of the issue during the trial might unduly interrupt and delay the trial and inconvenience the jury; or a ruling in advance of trial may limit issues and save the parties time, effort, and cost in trial preparation. In determining if a pretrial ruling is justified a district court should weigh whether the material or evidence in question will be inadmissible at trial, the probability of evidence and its potential prejudice." <i>State v. Shadden</i> , 290 Kan. 803, 816, 235 P.3d 436 (2010).	A motion in limine may be granted when a district court finds two factors are present: (1) the material or evidence in question will be inadmissible at trial; and (2) the pretrial ruling is justified as opposed to a ruling during trial because the more effort or mention of the evidence during trial may cause unfair prejudice, confuse the issues, or mislead the jury; the consideration of the issue during the trial might unduly interrupt and delay the trial and inconvenience the jury; or a ruling in advance of trial may limit issues and save the parties time, effort, and cost in trial preparation.	Are pretrial grants of a motion in limine justified as opposed to a ruling during the trial?	Preltrial Procedure - Memo # 644 - C - 558.docx	ROSS-003295300-ROSS-003295301	Condensed, SA	0.47	0	1	0	1	1

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51	State v. Shelden, 290 Kan. 803	110463241	Hence, to restate the Quick factors by incorporating these considerations, a motion in limine may be granted when a district court finds two factors are present: (1) the material or evidence in question will be inadmissible at trial; and (2) the material or evidence in question will be inadmissible during trial because the mere offer or presentation of the evidence during trial may cause unfair prejudice, confuse the issues, or mislead the jury. The consideration of the issue during the trial might unduly interrupt and delay the trial and inconvenience the jury, or a ruling in advance of trial may limit issues and save the parties time, effort, and cost in trial preparation. In determining if a pretrial ruling is justified a district court should consider the material or evidence in question, the burden it places on the value and edification of evidence and its potential prejudice. On appeal, an appellate court considers the same factors. Although the Quick court did not discuss the standard for reviewing a district court decision regarding these factors, this court later adopted a separate standard of review for each factor. See Board of Educ., U.S.D. No. 464 v. Porter, 234 Kan. 690, 694, 678 P.2d 84 (1984). Eventually, the court contained the two factors in the standard of review. The standard of review is the same standard routinely applied to decisions regarding whether the same standard routinely applied to decisions regarding whether the circumstances justified a ruling in advance of trial. See State v. Rowell, 256 Kan. 200, 208, 883 P.2d 1184 (1994).	A motion in limine may be granted when a district court finds two factors are present: (1) the material or evidence in question will be inadmissible at trial; and (2) the material or evidence in question will be inadmissible during trial because the mere offer or presentation of the evidence during trial may cause unfair prejudice, confuse the issues, or mislead the jury. The consideration of the issue during the trial might unduly interrupt and delay the trial and inconvenience the jury, or a ruling in advance of trial may limit issues and save the parties time, effort, and cost in trial preparation.	Are pretrial grants of a motion in limine justified as opposed to a ruling during the trial?	042471.docx	LEGALCASE-00124428-LEGALCASE-00124429	Condensed, SA	0.62	839	1	15,344	14,873	21,876	9,029
52	Hanson v. Wenzelall Sys., 175 Or. App. 92	41341	Workers who are injured in the course and scope of employment are entitled to receive certain benefits from their employers, and, with some notable exceptions, those benefits are exclusive of all other remedies that would otherwise be available to the worker. ORS 656.018; see also Nicholson v. Blackby, 305 Or. 578, 581, 753 P.2d 955 (1988). The workers' compensation scheme is a <i>quid pro quo</i> , in which the employer compensates the employee for the right to defend against certain actions involving workplace injuries, while receiving the benefit of a limit on potential damages; conversely, the employee is compensated for injuries regardless of whether the employer would be liable in tort, while giving up the right to pursue other statutory or common-law remedies. See Shoemaker v. Johnson, 241 Or. 311, 313-15, 407 P.2d 257 (1965) (discussing "the <i>quid pro quo</i> means of society [that] provided a means whereby certain costs and risks associated with litigation). But see Smothers v. Graham Transfer, Inc., 332 Or. 83, 23 P.3d 333 (2001) (recognizing constitutionally mandated exceptions to that statutory principle).	The workers' compensation scheme involves a <i>quid pro quo</i> , in which the employer gives up the right to defend against certain actions involving workplace injuries, while receiving the benefit of a limit on potential damages; conversely, the employee is compensated for injuries regardless of whether the employer would be liable in tort, while giving up the right to pursue other statutory or common-law remedies.	Does the workers' compensation scheme involve a <i>quid pro quo</i> in which the employer gives up the right to defend against certain actions involving workplace injuries while receiving the benefit of a limit on potential damages?	048072.docx	LEGALCASE-00125964-LEGALCASE-00126565	Condensed, SA	0.65	0	1	0	0	1	1
53	Union of Texas Med. Branch at Galveston v. Estate of Blackmon ex rel. Shultz, 195 S.W.3d 98	30744517.1	Of course, the trial court need not immediately litigate the effect of the notice of nonsuit's filing. Rule 162 states that the plaintiff's right to nonsuit "shall not prejudice the right of an adverse party to be heard on a pending claim for affirmative relief or excuse the payment of all costs taxed by the clerk," and a dismissal "shall have no effect on any motion for sanctions, attorney's fees or other costs, pending at the time of dismissal." Tex. R. Civ. P. 162. A claim for affirmative relief must allege a claim that is not barred by the statute of limitations. The claim could remove compensation or relief, even if the plaintiff abandons or is unable to establish his cause of action. BHP Petroleum Co., Inc. v. Millard, 800 S.W.2d 838, 841 (Tex.1990). UTMW has not raised a claim for affirmative relief, but it did request costs in its plea to the jurisdiction. Rule 162 permits the trial court to hold hearings and enter orders affecting costs, attorney's fees, and sanctions, even after "notice of dismissal" is filed. See, e.g., Blackmon v. Shultz, 195 S.W.3d 98, 100 (Tex.2006). Rule 162 dat 38. Thus, the trial court has discretion to defer signing an order of dismissal so that it can "allow a reasonable amount of time" for holding hearings on these matters which are "collateral to the merits of the underlying case." <i>Id.</i> at 38-39. Although the Rule permits motions for costs, attorney's fees, and sanctions to remain viable in the trial court, it does not forestall the nonsuit's effect of rendering the merits of the case moot.	A trial court has discretion to defer signing an order of dismissal so that it can allow a reasonable amount of time for holding hearings on these matters which are collateral to the merits of the underlying case, although the civil procedure rule governing nonsuits permits motions for costs, attorney fees, and sanctions to remain viable in the trial court, it does not forestall the nonsuit's effect of rendering the merits of the case moot. Vernon's Ann. Texas Rules Civ.Proc., Rule 162.	"Is there any bill which forestall the work's effect of rendering the merits of the case moot although it permits motions for costs, attorney fees, and sanctions to remain viable in the trial court?"	Partial Procedures Memo # 2308 - C-NS.docx	NSCSE-00337302-ROGSS-00332031	SA, Sub	0.68	0	0	1	1	1	
54	Neh v. State Farm Fire & Cas. Co., 300 Ga. 68	30744486	The relevant principles of law are clear. Pursuant to OCGA § 9-11-36(a)(2), the matters in the requests for admissions were admitted by operation of law when [Neh] failed to answer the requests within 30 days of service. The trial court had the discretion to deny the requests for admissions pursuant to OCGA § 9-11-36(b) was satisfied. Those two prongs are (1) that withdrawal of the admissions will subvert or advance the presentation of the merits of the action and (2) that there is no satisfactory showing that withdrawal will prejudice the party who obtained the admissions. The party seeking to withdraw the admissions (where, as here, the requestor bore the burden of proving the matters addressed in the requests) has the burden of showing that the admissions were not voluntarily made and that either can be related by admissible evidence having a modicum of credibility or is incredible on its face, and the denial is not offered solely for purposes of delay. Failure to present admissible, credible evidence contradicting the admitted matters justifies the denial of the motion to withdraw.	Party seeking to withdraw admissions by operation of law for failure to answer requests for admission within 30 days has the burden of establishing that withdrawal of the admissions will subvert or advance the presentation of the merits of the action by showing that the admission will subvert or advance the presentation of the merits of the action and (2) that there is no satisfactory showing that withdrawal will prejudice the party who obtained the admissions. The party seeking to withdraw the admissions (where, as here, the requestor bore the burden of proving the matters addressed in the requests) has the burden of showing that the admissions were not voluntarily made and that either can be related by admissible evidence having a modicum of credibility or is incredible on its face, and the denial is not offered solely for purposes of delay; failure to present admissible, credible evidence contradicting the admitted matters justifies the denial of the motion to withdraw. West's Ga. Code Ann. § 9-11-36(b).	"Does the failure to present admissible, credible evidence contradicting the admitted matters justify the denial of the motion to withdraw admissions so deemed by operation of law for failure to answer requests for admissions within 30 days of service?"	032008.docx	LEGALCASE-00136625-LEGALCASE-00136627	Condensed, SA, Sub	0.49	0	1	1	1	1	1

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	Toskov v. Oliver Iron Min. Co., 232 Minn. 422	41.3+1	In determining the nature and scope of the right of a disabled workman, or of his dependents if he dies from a compensable injury, it is well to bear in mind that compensation acts as Sullivan, and their rights and liabilities created thereunder are to be given full force and effect according to their own unique status, although they may not fit into the general classification of the rights and liabilities of a workman. The rights and liabilities as a result of contract, on the theory that the statute becomes a part of the contract of employment, see Warner v. Zaiser, 184 Minn. 598, 239 N.W. 761; Sanly v. Walter Butler Shipbuilders, Inc., 221 Minn. 215, 218 N.W.2d 612, 614; but, strictly speaking, such rights and liabilities are created independently of any actual or implied contract and pursuant to the police power, are imposed upon the employment status or relationship as a cost of industrial production. As a purely statutory creation based on status, it confers, when certain operative conditions are met, a right to compensation payments, in the future field of the law, it is recognized that certain rights or interests, whether present or future, may be vested, and that the vesting may be either absolute or defeasible. L'tourneau v. Henquet, 89 Mich. 428, 50 N.W. 1077, 28 Am.51 Rep. 310. Black's Law Dictionary (8 ed.) p. 1811. When compensation installments have once become due and payable in the lifetime of the beneficiary, the right to them becomes vested in him absolutely and is not vested absolutely, but in a defeasible sense. We have heretofore pointed out that as to future payments, which are yet to come due, the right to them is defeasible and terminates upon death and is therefore not vested in the sense of being transmissible to one's heirs. Timmer v. Tierney & Co., 175 Minn. 464, 223 N.W. 773. By express	In certain limited senses, rights and liabilities for workmen's compensation arise out of contract, on theory that Compensation Act becomes part of contract of employment but strictly speaking, such rights and liabilities are created independently of any actual or implied contract and, pursuant to police power, are imposed on employment status or relationship as a cost of industrial production. M.S.A. § 176.01 et seq.	"Do the rights and liabilities for workmen's compensation arise out of contract in certain limited senses, on the theory that the Compensation Act becomes part of the employment contract, while strictly speaking, such rights and liabilities are created independently of any actual or implied contract and are imposed upon the employment status pursuant to the police power?"	047931.docx	LEGALASE-00137280-LEGALASE-00137281	Condensed, SA, Sub 0.89	839 0	15,344 1	14,873 1	21,876 1	9,029 1	
55														
	Deutsche Bank Nat. Tr. Co. v. Lipp, 78 So. 3d 81	307A-690	Dismissing a case with prejudice is the ultimate sanction and should only be used in "those aggravating circumstances in which a lesser sanction would be inadequate to protect the integrity of the judicial system." 888 F.3d 1198, 1200 (11th Cir. 2018) (quoting 11 Fed. Cir. 1188 (1998)). When deciding whether to sanction a party by dismissing a case with prejudice, a court should consider the following factors: 1) whether the attorney's "disobedience was willful, deliberate, or contumacious, rather than an act of neglect or inexperience; 2) whether the attorney has been previously sanctioned; 3) whether the delay prejudiced the opposing party through undue expense, loss of evidence, or in some other fashion; 4) whether the attorney offered reasonable justification for noncompliance; and 5) whether the delay created significant problems of judicial administration. After considering these factors," if a sanction less severe than dismissal with prejudice appears to be a viable alternative, the trial court should employ such an alternative." Id. Sanctions short of dismissing a case with prejudice are appropriate when the errors are made by the attorney and not the client. Am. Express Co. v. Hickey, 869 So.2d 694, 695 (Fla. 5th DCA 2004).	When deciding whether to sanction a party by dismissing its case with prejudice, a court should consider the following factors: (1) whether the attorney's "disobedience was willful, deliberate, or contumacious, rather than an act of neglect or inexperience; (2) whether the attorney has been previously sanctioned; (3) whether the delay prejudiced the opposing party through undue expense, loss of evidence, or in some other fashion; (4) whether the attorney offered reasonable justification for noncompliance; and (6) whether the delay created significant are problems of judicial administration.	"When deciding whether to sanction a party by dismissing its case with prejudice, should a court consider any factors?"	049511.docx	LEGALASE-00156853-LEGALASE-00156854	Condensed, SA	0.48	0	1	0	1	
56														
	Dubmedietov, Dervny, 421 N.J. Super. 312	307A-679	Dervny's brings its motion pursuant to Rule 4:67-1(c), contending that Dubmedietov's second amended complaint fails to state a claim upon which relief may be granted. In addressing a motion to dismiss brought pursuant to Rule 4:67-1(c) a court's "inquiry is limited to examining the legal sufficiency of the facts alleged on the face of the complaint." A-23 P.3d 1889. Herndon v. Sharp Practices Corp., 116 N.J. 350, 746, 563 A.2d 311 (1989). Herndon was a contract dispute, and the court dealt with and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary."	In dismissing a motion to dismiss for failure to state a claim upon which relief may be granted, a court's inquiry is limited to examining the legal sufficiency of the facts alleged on the face of the complaint; however, the court must search the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim. Opportunity being given to amend if necessary. 4:67-1(c).	"Before a court dismisses a civil complaint with prejudice, should it search the complaint in depth and with liberality to ascertain whether the fundament of a cause of action can be gleaned even from an obscure statement of claim an opportunity to amend if necessary?"	04024.docx	LEGALASE-00102224-LEGALASE-00102225	SA, Sub	0.32	0	0	1	1	
57														
	Manhattan Ice & Cold Storage v. City of Manhattan, 294 Kan. 60	307A-3	A district judge "has broad discretion in determining what evidence will be allowed in an eminent domain proceeding." Mooney v. City of Manhattan, 294 Kan. 60, 609 P.2d 1484, 1486 (Kan. 1980). No. 444, Porter, 234 Kan. 690, 696 P.2d 1484, 1486 (Kan. 1980). In line may be granted when a district court finds two factors are present: (1) The material or evidence in question will be inadmissible at trial; and (2) The pretrial ruling is justified as opposed to a ruling during trial because the mere offer or mention of the evidence during trial may cause unfair prejudice, confuse the issues, or mislead the jury; the consideration of the issue during the trial might unduly interrupt and delay the trial and waste the time and expense of the parties. In such cases, a pretrial ruling is justified if a pretrial ruling is justified if a district court should weigh whether the court will be in a better position during trial to assess the value and utility of evidence and its potential prejudice." State v. Shadden, 290 Kan. 803, 816, 235 P.2d 436 (2010).	A motion in limine may be granted when a district court finds two factors are present: (1) The material or evidence in question will be inadmissible at trial; and (2) The pretrial ruling is justified as opposed to a ruling during trial because the mere offer or mention of the evidence during trial may cause unfair prejudice, confuse the issues, or mislead the jury; the consideration of the issue during the trial might unduly interrupt and delay the trial and waste the time and expense of the parties. In such cases, a pretrial ruling is justified if a pretrial ruling is justified if a district court should weigh whether the court will be in a better position during trial to assess the value and utility of evidence and its potential prejudice.	"What factors must be present for a district court to grant a motion in limine?"	041151.docx	LEGALASE-00124055-LEGALASE-00124056	Condensed, SA	0.47	0	1	0	1	
58														

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70	Robinson v. Texas Auto. Ins. Co., 214 F.2d 432	313+102	The elements necessary to establish that material is protected by the attorney-client privilege are (1) the communication was made in confidence; (2) the communication was made to a member of a bar of a court, or his subordinate, and (3) the communication relates to a fact of which the attorney was informed by the client (or the client's agent) for the purpose of securing legal services (or assistance in some legal proceeding, and not for the purpose of committing a crime or tort; and (4) the privilege has been claimed and not waived by the client.	Elements necessary to establish that material is protected by the federal attorney-client privilege are (1) the communication was made in confidence; (2) the communication was made to a member of a bar of a court, or his subordinate, and (3) the communication relates to a fact of which the attorney was informed by the client (or the client's agent) for the purpose of securing legal services or assistance in some legal proceeding, and not for the purpose of committing a crime or tort; and (4) the privilege has been claimed and not waived by the client.	What should a party invoking the protection of the attorney-client privilege establish?	Privileged Communications and Confidentiality - Memo 7 - VP.docx	LEGAL/ASE-00001611-LEGAL/ASE-00001612	Condensed, SA	0.39	839	15,344	14,873	21,876	9,079
71	Columbia Cent. Bank v. Newman Park, 166 Wash. App. 634	366+1	Subrogation is appropriate to prevent unjust enrichment if the person seeking subrogation performs an obligation under the following circumstances: (1) in order to protect his or her interest; (2) under a legal duty to do so; (3) on account of misrepresentation, mistake, duress, undue influence, deceit, or other similar imposition; or (4) upon a request from the obligor or the obligor's successor to do so. If the person performing was promised repayment and reasonably expected to receive it, the person performing is not subrogated. If the person performing was being discharged, and if subrogation will not materially prejudice the holders of intervening interests in the real estate. BNC Mortgage, Inc. v. Tax Pros, Inc., 111 Wash.App. 238, 255-56, 46 P.3d 812 (2002).	Subrogation is appropriate to prevent unjust enrichment if the person seeking subrogation performs an obligation under the following circumstances: (1) in order to protect his or her interest; (2) under a legal duty to do so; (3) on account of misrepresentation, mistake, duress, undue influence, deceit, or other similar imposition; or (4) upon a request from the obligor or the obligor's successor to do so. If the person performing was promised repayment and reasonably expected to receive it, the person performing is not subrogated. If the person performing was being discharged, and if subrogation will not materially prejudice the holders of intervening interests in the real estate.	When is equitable subrogation appropriate to prevent unjust enrichment?	003529.docx	LEGAL/ASE-00120309-LEGAL/ASE-00120310	Condensed, SA	0.11	0	1	0	1	
72	Evergreen Recycle v. Indiana Lumbermens Mut. Ins. Co., 51 Kan. App. 2d 459	307A+3	Once the district court follows the steps outlined above and determines that the evidence will be inadmissible at trial, the court also must find that a pretrial ruling is justified as opposed to a ruling during trial. The court must find that a pretrial ruling is justified to avoid the cause unfair prejudice, confuse the issues, or mislead the jury, the consideration of the issue during trial might unduly interrupt and delay the trial, or a ruling in advance of trial may limit issues and save the parties time, effort, and cost in trial preparation. Schlager v. Kaplan, 296 Kan. 456, 467, 293 P.3d 155 (2013).	Once district court determines that evidence challenged by motion in limine will be inadmissible at trial, the court also must find that a pretrial ruling is justified because the mere offer or mention of the evidence would cause unfair prejudice, confuse the issues, or mislead the jury, the consideration of the issue during trial might unduly interrupt and delay the trial, or a ruling in advance of trial may limit issues and save the parties time, effort, and cost in trial preparation.	"Once the district court determines that evidence challenged by motion in limine will be inadmissible at trial, must the court also find that a pre-trial ruling is justified?"	024022.docx	LEGAL/ASE-00122046-LEGAL/ASE-00122047	Condensed, SA	0.18	0	1	0	1	
73	Stake v. Johnston, 249 Ga. 413	110+392-60	A motion in limine is a pretrial action which may be used for many purposes. The court seeks a final ruling on the admissibility of evidence. But the present seeks, not a final ruling on the admissibility of evidence, but only to prevent the mention by anyone, during the trial, of a certain item of evidence or a area of inquiry until its admissibility can be determined during the course of the trial outside the presence of the jury. Lagour v. State, 268 Ind. 441, 376 N.E.2d 475, 481 (1978); Taylor v. Weber, 722 N.W.2d 919 (Iowa 1974); Redding v. Ferguson, 501 S.W.2d 717, 720 (Tex.Civ.App.1973). 2) The movant seeks a ruling on the admissibility of evidence prior to the trial. The trial court has an absolute right to refuse evidence if it is inadmissible. The court's decision is not subject to an ordinary rule of evidence prior to trial. Cf. Waldine v. State, supra. Courts decides to rule on the admissibility of evidence prior to trial, the court's determination of admissibility is similar "to a preliminary ruling on evidence at a pretrial conference" and it "controls the subsequent course of action, unless modified at trial to prevent manifest injustice." Harley-Davidson Motor Co. v. Banaal, 244 Ga. 284, 285 G., 260 S.E.2d 20 (1979).	Trial court has absolute right to refuse to decide admissibility of evidence before jury. The court's decision is not subject to an ordinary rule of evidence prior to trial. The trial court decides to rule on the admissibility of evidence prior to trial, the court's determination of admissibility is similar to a preliminary ruling on evidence at a pretrial conference and it controls the subsequent course of action unless modified at trial to prevent manifest injustice.	"If the trial court decides to rule on the admissibility of evidence prior to trial, is the court's determination of admissibility similar to a preliminary ruling on evidence at a pretrial conference and will it control the subsequent course of action, unless modified at the trial to prevent manifest injustice?"	027894.docx	LEGAL/ASE-00123126-LEGAL/ASE-00123127	Condensed, SA	0.64	0	1	0	1	
74	Moscow Fire Ins. Co. of Moscow, Russia v. Bank of New York & Tr. Co., 161 Misc. 908	221+146	A Constitution is not intended to be a limitation on the development of a country nor an obstruction to its progress and foreign relations. Courts are not inclined to adopt technical or strained constructions which would unduly impair the efficiency of its legislative and political powers. A Constitution is intended to meet and to be applied to new conditions and new circumstances. A court should look to the history of the times and examine the origin and development of the new nation and the state of facts existing when the Constitution was framed and adopted and the prior history of the constituent republics in order to give significance to the new system of government which it creates.	In construing Constitution of Soviet government, courts should look to history of times and examine origin and development of new nation and state of facts existing when Constitution was framed and adopted and prior history of constituent republics in order to give significance to new system of government which Constitution created.	"In construing Constitution of a State government, should the court look to history of times and state of facts existing when Constitution was framed and adopted and prior history of constituent republics in order to give significance to new system of government which Constitution created?"	020085.docx	LEGAL/ASE-00123367-LEGAL/ASE-00123368	SA, Sub	0.56	0	0	1	1	
75	Geophysical Survey, a TGS-NOPEC Geophysical Co., 850 F.3d 785	221+242	The act of state doctrine "limits, for prudential rather than jurisdictional reasons, the solicitation in American courts of the validity of a foreign sovereign's public acts." The doctrine applies to bar an action when the relief sought or the defense interposed would have required a court in the United States to declare invalid the official act of a foreign sovereign performed within its own territory. "Though seemingly international in character, the doctrine is founded in concerns of domestic separation of powers, reflecting the strong sense of the judicial branch that its engagement in the task of passing on the validity of foreign acts of state is not its proper function. The doctrine is not a rule of decision, but one upon which a court must decide that is, when the outcome of the case turns upon the effect of official action by a foreign sovereign." It can apply "even if the defendant is a private party, not an instrumentality of a foreign state, and even if the suit is not based specifically on a sovereign act."	"Act of state doctrine" limits, for prudential rather than jurisdictional reasons, the solicitation in American courts of the validity of a foreign sovereign's public acts, and thus the doctrine applies to bar an action when the relief sought or the defense interposed would have required a court in the United States to declare invalid the official act of a foreign sovereign performed within its own territory, but the doctrine can apply even if the defendant is a private party, not an instrumentality of a foreign state, and even if the suit is not based specifically on a sovereign act.	Does the act of state doctrine bar courts from adjudicating a case when the relief sought would require a court in the United States to declare invalid the official act of a foreign sovereign performed within its boundaries?	Internat'l Law Memo 311 - RM.docx	POSC-00034517-POSC-0034519	Condensed, SA	0.42	0	1	0	1	

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76	Heine v. Allen Mem'l Hosp. Corp., 549 N.W.2d 821	307A+2	The court may "hear and determine any point of law raised in any dispute between the parties to the case." Two R.Civ.P. 105. Whether the court may hear and determine any point of law raised in any dispute between the parties to the case is a legal issue that may be raised by a rule 105 motion. See Barony, State Farm Mut. Auto. Ins. Co., 540 N.W.2d 423, 424 (Iowa 1995).	Rule providing that court may hear and determine any point of law raised in any dispute between the parties to the case is a legal issue that may be raised by a rule 105 motion. See Barony, State Farm Mut. Auto. Ins. Co., 540 N.W.2d 423, 424 (Iowa 1995).	"Does a Rule providing that court may hear and determine any point of law raised in any dispute between the parties to the case is a legal issue that may be raised by a rule 105 motion, allow adjudication if there are no material facts in dispute?"	Fetral Procedure - Memo #220 - C-00338.docx	ROSS-002833901-ROSS-00338.docx	Condensed, SA, Sub	0.41	839	15,344	14,873	21,876	9,079
77	Columbia Cmty. Bank v. Newman Park, 166 Wash. App. 634	366+1	Subrogation is appropriate to prevent unjust enrichment if the person seeking subrogation performs an obligation under the following circumstances: (1) in order to protect his or her interest; (2) under a legal duty to do so; (3) on account of misrepresentation, mistake, duress, undue influence, deceit, or other similar imposition; or (4) upon a request from the obligor or the obligor's successor to do so. If the person performing the obligation is a party to the dispute, the person seeking subrogation is in the real estate with the priority of the mortgage being discharged, and if subrogation will not materially prejudice the holders of intervening interests in the real estate. BNC Mortg., Inc. v. Tax Pros, Inc., 111 Wash.App. 238, 255 '96, 46 P.3d 812 (2002).	Subrogation is appropriate to prevent unjust enrichment if the person seeking subrogation performs an obligation under the following circumstances: (1) in order to protect his or her interest; (2) under a legal duty to do so; (3) on account of misrepresentation, mistake, duress, undue influence, deceit, or other similar imposition; or (4) upon a request from the obligor or the obligor's successor to do so. If the person performing the obligation is a party to the dispute, the person seeking subrogation is in the real estate with the priority of the mortgage being discharged, and if subrogation will not materially prejudice the holders of intervening interests in the real estate.	When is subrogation appropriate to prevent unjust enrichment?	043986.docx	LEGALASE-00125078-LEGALASE-00125079	Condensed, SA	0.11	0	1	0	1	1
78	Bandes v. Harlow & Jones, 852 F.2d 661	221+42	At the outset, we must address the district court's conclusion that the act of state doctrine does not bar judicial resolution of the dispute. The act of state doctrine is a principle of international law that prevents courts in one country from adjudicating disputes regarding the validity of the acts executed by a foreign sovereign within its territory. The Supreme Court stated more than ninety years ago in Underhill v. Hernandez, 168 U.S. 250, 252, 18 S.Ct. 83, 84, 42 L.Ed. 456 (1897): "Every sovereign State is bound to respect the independence of every other sovereign State, and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory. Redress of wrongs must be sought by appropriate diplomatic channels or other peaceful means. It is not the business of American courts to interfere with foreign governments in their political acts unless the rights of our citizens are violated. The act of state doctrine has constitutional underpinnings as well. It clearly reflects fundamental notions of separation of powers in urging that our nation conduct its foreign relations with the unified voice of the Executive branch rather than through a multitude of judicial pronouncements. Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 84 S.Ct. 923, 11 L.Ed.2d 804 (1964). Indeed, if the judiciary were to engage in the task of passing on the validity of foreign acts of state, it may well hinder this country's pursuit of good faith for itself and for the community of nations as a whole.	Act of state doctrine requiring courts to avoid inquiries respecting validity of acts executed by foreign sovereign within its territory reflects principle of international law that prevents courts in one country from adjudicating disputes regarding the validity of the acts executed by a foreign sovereign within its territory. The Supreme Court stated more than ninety years ago in Underhill v. Hernandez, 168 U.S. 250, 252, 18 S.Ct. 83, 84, 42 L.Ed. 456 (1897): "Every sovereign State is bound to respect the independence of every other sovereign State, and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory. Redress of wrongs must be sought by appropriate diplomatic channels or other peaceful means. It is not the business of American courts to interfere with foreign governments in their political acts unless the rights of our citizens are violated. The act of state doctrine has constitutional underpinnings as well. It clearly reflects fundamental notions of separation of powers in urging that our nation conduct its foreign relations with the unified voice of the Executive branch rather than through a multitude of judicial pronouncements. Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 84 S.Ct. 923, 11 L.Ed.2d 804 (1964). Indeed, if the judiciary were to engage in the task of passing on the validity of foreign acts of state, it may well hinder this country's pursuit of good faith for itself and for the community of nations as a whole.	Does an act of state doctrine requiring courts to avoid inquiries respecting the validity of acts executed by foreign sovereign within its territory reflect principle of international law that prevents courts in one country from adjudicating disputes regarding the validity of the acts executed by a foreign sovereign within its territory? Does the act of state doctrine require courts to avoid inquiries respecting the validity of acts executed by a foreign sovereign within its territory? Does the act of state doctrine require courts to avoid inquiries respecting the validity of acts executed by a foreign sovereign within its territory?	020693.docx	LEGALASE-00126191-LEGALASE-00126193	Condensed, SA, Sub	0.81	0	1	1	1	1
79	Brook VIII, N. Assocs. v. Gen. Elec. Co., 686 F.2d 66	170A+1684	The instant case poses the question of the discretion of a district court to permit withdrawal or amendment of an admission by default once trial has commenced. In general, the standard for being relieved of a failure to admit is that the party must show that the admission was made in error, that the party was misled or deceived, and that the party was prejudiced by the admission. The court may allow withdrawal or amendment of an admission "when the presentation of the merits of the action will be subverted thereby and the party who obtained the admission fails to satisfy the court that defense on the merits." Fed.R.Civ.P. 36(b). The prejudice contemplated by the Rule is not simply that the party who initially obtained the admission will now have to convince the fact finder of its truth. Rather, it relates to the difficulty a party may face in proving its case, e.g., caused by the inadmissibility of evidence that would otherwise be available to the party. The court may allow withdrawal or amendment of an admission when the party can show evidence with respect to the questions previously answered by the admissions. See Westmoreland v. Triumph Motorcycle Corp., 71 F.R.D. 192 (D.Cm. 1976).	The prejudice contemplated by the admission is not simply that the party who initially obtained the admission will presently have to convince the fact finder of its truth. Rather, it relates to the difficulty a party may face in proving its case, e.g., caused by the inadmissibility of evidence that would otherwise be available to the party. The court may allow withdrawal or amendment of an admission "when the presentation of the merits of the action will be subverted thereby and the party who obtained the admission fails to satisfy the court that defense on the merits." Fed.R.Civ.P. 36(b). The prejudice contemplated by the Rule is not simply that the party who initially obtained the admission will now have to convince the fact finder of its truth. Rather, it relates to the difficulty a party may face in proving its case, e.g., caused by the inadmissibility of evidence that would otherwise be available to the party. The court may allow withdrawal or amendment of an admission when the party can show evidence with respect to the questions previously answered by the admissions. See Westmoreland v. Triumph Motorcycle Corp., 71 F.R.D. 192 (D.Cm. 1976).	"Does prejudice warranting denial of permission to withdraw admission relate to difficulty a party may face in proving its case, due to unavailability of key witnesses or the sudden need to obtain evidence on matters previously admitted?"	020936.docx	LEGALASE-00134357-LEGALASE-00134358	Condensed, SA, Sub	0.54	0	1	1	1	1
80	Frit Horizon Merch. Servs. v. Westloring Indus. Mgmt., 808 P.3d 166	307A+16.1	It is not manifestly arbitrary, unreasonable, or unfair, and thus not an abuse of discretion, to require a plaintiff to assert facts sufficient to establish personal jurisdiction before requiring a defendant to bear the cost and burden of responding to discovery. Wern v. Nat'l Westminster Bank, P.L.C. supra, 91 P.3d at 470 (denying request for discovery on issue of agency).	It is not manifestly arbitrary, unreasonable, or unfair, and thus not an abuse of discretion, to require a plaintiff to assert facts sufficient to establish personal jurisdiction before requiring a defendant to bear the cost and burden of responding to discovery.	"Is it not manifestly arbitrary, unreasonable, or unfair, and thus not an abuse of discretion, to require a plaintiff to assert facts sufficient to establish personal jurisdiction before requiring a defendant to bear the cost and burden of responding to discovery?"	032709.docx	LEGALASE-00139572-LEGALASE-00139578	Condensed, SA	0.26	0	1	0	1	1

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81	Mueiller v. Shaktlett, 156 Neb. 881	307A-483	Section 25 th 1267.41, R.S.Supp. 1951, is identical with Rule 36 of the Federal Rules of Civil Procedure, 28 U.S.C.A. Its provisions are not merely directory, but substantial compliance therewith is required. However, to prevent an unfair surprise to the party and to avoid the expense of a motion to set aside a judgment, the court should not set aside a judgment on the ground of a technical error, but should set aside a judgment on the ground of a substantial error. In that connection, the applicable rule here is that where a party properly serves a request for admissions of relevant matters of fact or the genuineness of relevant documents, and all objections thereto are heard and appropriately denied by the court, and other party has been given an opportunity to answer the request, and such party fails to do so within the time allowed, the court may deem the facts sought to be admitted. R.S.Supp. 1951, § 25-1267.41.	Where a party properly serves request for admissions of relevant matters of fact or genuineness of relevant documents, and all objections thereto are heard and appropriately denied by court, and other party has been given an opportunity to answer the request, and such party fails to do so within the time allowed, the court may deem the facts sought to be admitted. R.S.Supp. 1951, § 25-1267.41.	"Where a party properly serves a request for admissions of relevant matters of fact or genuineness of relevant documents, and all objections are heard and denied by the court, and the other party has been given an opportunity to answer the request, and such party fails to do so within the time allowed, the court may deem the facts sought to be elicited?"	030613.docx	LEGALCASE-00141156- LEGALCASE-00141157	Condensed, SA	0.73	839 0	15,344 0	14,873 0	21,876 1	9,029
82	Am. Coll. Connection, v. University of Iowa, 331 Ga. App. 867	307A-554	At the outset, we note that a defendant who files a motion to dismiss for failure to state a claim is not entitled to a full evidentiary hearing. Furthermore, when the motion is decided without an evidentiary hearing and based solely upon the written submissions of the parties, as it was here, "any disputes of fact must be resolved in the light most favorable to the party asserting the existence of personal jurisdiction, and we review the decision of the trial court de novo."	When a motion to dismiss for lack of personal jurisdiction is decided without an evidentiary hearing and based solely upon the written submissions of the parties, any disputes of fact must be resolved in the light most favorable to the party asserting the existence of personal jurisdiction, and the Court of Appeals reviews the decision of the trial court de novo.	"When a motion to dismiss for lack of personal jurisdiction is decided without an evidentiary hearing and based solely upon the written submissions of the parties, any disputes of fact must be resolved in the light most favorable to the party asserting the existence of personal jurisdiction?"	033769.docx	LEGALCASE-00142228- LEGALCASE-00142729	SA, Sub	0.25	0	0	1	1	
83	Zanyycha v. Montgomery Cty. Dist. Att'y, 398 S.W.3d 260	307A-697	In Sanchez v. Garcia this Court held with the latter, noting that the standard for reinstatement "should be the same regardless of whether a case is dismissed pursuant to rule 165a or the court's inherent power." No. 13-07-3577-CV, 2006 WL 2076752, at 6 (Tex.App.-Corpus Christi July 27, 2006, pet. denied) (mem. op.) (citing Ramapatt Capital Corp. v. Meguire, 1 S.W.3d 106, 107 (Tex.1999) [Hecht, J., dissenting]). Thus, when a case is dismissed for want of prosecution based on the trial court's inherent power to do so for lack of due diligence, the standard for reinstatement should be the same regardless of whether here, the plaintiff "must prove that the failure or omission that led to dismissal was the product of an accident or mistake or must otherwise reasonably explain that its actions were not intentional or consciously indifferent." See id.; see also Capapetta, 222 S.W.3d at 166-67 (holding that rule 165a(b)'s standard applied to inherent power based dismissal); Maldonado v. Conroe Crossing Co., No. 09-36-00401-CV, 1997 WL 426026, at *1 (Tex.App.-Houston [1st Dist.] Sept. 15, 1997, no writ) (affirming dismissal for failure to prosecute under rule 165a(b) standard to a lack-of-diligence dismissal). We conclude that Zanyycha did so in this case.	When a case is dismissed for want of prosecution based on the trial court's inherent power to do so for lack of due diligence, the plaintiff seeking reinstatement must prove that the failure or omission that led to dismissal was the product of an accident or mistake or must otherwise reasonably explain that its actions were not intentional or consciously indifferent. Vernon's Ann. Texas Rules Civ.P.roc., Rule 165a(3).	"When a case is dismissed for want of prosecution based on the trial court's inherent power to do so for lack of due diligence, the plaintiff should the plaintiff seeking reinstatement prove that the failure or omission that led to dismissal was the product of an accident or omission that led to dismissal was the product of an accident?"	Petral Procedure - Memo 11271 - C - MDA_14221.docx	R055-003282-608-R055-003282609	SA, Sub	0.65	0	0	1	1	
84	Parker ex rel. Parker v. American Athletic Ass'n, 204 Fed. 42	14E-965	Intercollegiate association rule that barred a student who transferred to a new school from competing in sports for a prescribed period in sports he or she had played during previous 12 months, even if transfer was not athletically motivated, did not violate equal protection; rule was rationally related to legitimate purpose of deterring athletically motivated transfers and recruitment of students, and objective standard was reasonable because conducting factual inquiry into motivation for every transfer was not possible. U.S.C.A. Const.Amend. 14, § 5; 34 U.S.C. Cont.Arr. 2, § 13.	Intercollegiate association rule that barred a student who transferred to a new school from competing in sports he or she had played during previous 12 months, even if transfer was not athletically motivated, did not violate equal protection; rule was rationally related to legitimate purpose of deterring athletically motivated transfers and recruitment of students, and objective standard was reasonable because conducting factual inquiry into motivation for every transfer was not possible. U.S.C.A. Const.Amend. 14, § 5; 34 U.S.C. Cont.Arr. 2, § 13.	Does athletic association's rule that transferring students are ineligible to compete in sports for one year violate equal protection?	017295.docx	LEGALCASE-00164315- LEGALCASE-00164316	Condensed, SA, Sub	0.29	0	1	1	1	1
85	City of New Orleans v. Benson, 665 So. 2d 1196	13SH-425	In State v. Johnson, 99-725-07 (La. App. 4th Cir. 7/11/99), 693 So.2d 837, 838, 99-0101 (La. 1/20/00), 728 So.2d 1302, this court discussed the double jeopardy issue raised by the defendants, citing U.S. v. Halper, 490 U.S. 455, 109 S.Ct. 1892, 104 L.Ed.2d 487 (1989). In Halper, the court stated: Where a defendant previously has sustained a criminal penalty and the civil penalty sought in a subsequent proceeding bears no rational relation to the goal of compensating the Government for its loss, but rather constitutes a second punishment which vindicates the Government's damages and costs to determine if the penalty sought is a privilege which should not take a dominant role over academics."	Where defendant is previously has sustained criminal penalty and civil penalty sought in subsequent proceeding bears no rational relation to goal of compensating government for its loss, but rather appears to qualify as "punishment" under plain meaning of word, defendant is entitled to accounting of government's damages and costs to determine if penalty sought in fact constitutes second punishment which violates double jeopardy clause. U.S.C.A. Const.Amend. 5.	What happens when a defendant previously has sustained a criminal penalty and the civil penalty sought in the subsequent proceeding bears no rational relation to the goal of compensating the Government for its loss?	013710.docx	LEGALCASE-00166431- LEGALCASE-00166432	SA, Sub	0.68	0	0	1	1	

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86	Jackson v. Computer Sci. Paytheon, 38 So. 3d 754	413-2	Workers' compensation is purely a creature of statute. McCabe v. Palm Springs Nat. Club, 886 So.2d 126, 127 (Fla. 1st DCA 2005). Under this McCabe rule, the statute is the source of the employee's right to recovery available to the parties has been established by the Legislature as statutory (legal) rights. See id. at 128. Further, this court has consistently interpreted a carrier's right to assert a Social Security Disability offset, and the additional right to recoup any overpayments of compensation made, as issues of law to be decided on statutory and legal grounds. See e.g., Monroe v. Public Int'l, 790 So.2d 1249, 1252 (Fla. 1st DCA 2001) (formulating carrier's statutory right to recoupment of overpayments as an issue of law); see also, e.g., In re Estate of Gaudin, 872, 875 (Fla. 1st DCA 2009) (conditioning allowance for quantum meruit attorney fee on statute's failure to provide remedy for discharged attorney's right to recover payment for services provided under prematurely terminated contingency fee contract) (citations omitted); Zidlar v. Okedara Corp., 877 So.2d 927 (Fla. 1st DCA 2004) (explaining equitable defense of laches applies to attorney's fee lien because neither statute nor rule provide carrier remedy for untimely filing of such lien).	Because issues relating to an employee's entitlement to workers' compensation benefits and a carrier's right to various offsets are founded on statutory authority, the proper standard of review is de novo. The District Court of Appeal to graft onto an otherwise coherent statutory scheme, general equitable principles so as to permit non-legal, or equitable, permutations of such rights.	"Since issues relating to an employee's entitlement to benefits and a carrier's right to various offsets are founded on statutory authority, the proper standard of review is de novo. The District Court of Appeal to graft onto an otherwise coherent statutory scheme, general equitable principles so as to permit non-legal, or equitable, permutations of such rights?"	045023.docx	LEGALCASE-00136374-LEGALCASE-00136375	SA, Sub	0.8	839	15,344	14,873	21,876	9,079
87	Waskov, Marella, 269 Conn. 527	366-1	"The law has recognized two types of subrogation: conventional, and legal or equitable. 73 Am. Jur. 2d 599, Subrogation" 2 (1974) and 1995 Sup. J. Conventional subrogation can take effect only by agreement and has been said to be synonymous with assignment. It occurs where one having no interest or any relation to the matter pays the debt of another, and by agreement is entitled to the rights and securities of the creditor so paid ... By contrast, [the right of] legal or equitable] subrogation is not a creature of agreement, but rather a creature of law. It is a creature of equity between the parties, but takes place as a matter of equity, with or without an agreement to that effect.... The object of legal or equitable subrogation is the prevention of injustice. It is designed to promote and to accomplish justice, and is the mode which equity adopts to compel the ultimate payment of a debt by one who, in justice, equity, and good conscience, should pay it.... As now applied, the doctrine of legal or equitable subrogation is broad enough to include every instance in which one party has paid the debt of another, and the payment is made for which another is primarily liable, and which in equity and good conscience should have been discharged by the latter." (Citations omitted); internal quotation marks omitted.) Westchester Fire Ins. Co. v. Allstate Ins. Co., 236 Conn. 382, 37071, 672 A.2d 939 (1996).	The doctrine of legal or equitable subrogation is broad enough to include every instance in which one person, not acting as a mere volunteer or intruder, pays a debt for which another is primarily liable, and which in equity and good conscience should have been discharged by the latter.	"Is the doctrine of equitable subrogation broad enough to include every instance in which one person, not acting as a mere volunteer or intruder, pays a debt for which another is primarily liable, and which in equity and good conscience should have been discharged by the latter?"	Subrogation - Memo 371 - VP C.docx	R055-003285172-R055-003385174	Condensed SA	0.8	0	1	0	1	
88	Columbia Cmty. Bank v. Newman Park, 166 Wash. App. 634	366-1	Subrogation is appropriate to prevent unjust enrichment if the person seeking subrogation performs an obligation under the following circumstances:(1) in order to protect his or her interest; (2) under a legal duty to do so; (3) on account of misrepresentation, mistake, duress, undue influence, deceit, or other similar imposition; or (4) upon a request from the obligor or the obligor's successor to do so, if the person performing was promised repayment and reasonably expected to receive a security interest in the real estate with the priority of the mortgage holder's interest; and (5) the person seeking subrogation is not a holder of intervening interests in the real estate. BNC Mortgage, Inc. v. Tax Pros, Inc., 111 Wash.App. 238, 255-556, 46 P.3d 812 (2002).	Subrogation is appropriate to prevent unjust enrichment if the person seeking subrogation performs an obligation under the following circumstances: (1) in order to protect his or her interest; (2) under a legal duty to do so; (3) on account of misrepresentation, mistake, duress, undue influence, deceit, or other similar imposition; or (4) upon a request from the obligor or the obligor's successor to do so, if the person performing was promised repayment and reasonably expected to receive a security interest in the real estate with the priority of the mortgage holder's interest; and (5) the person seeking subrogation is not a holder of intervening interests in the real estate.	Is subrogation an appropriate means of preventing unjust enrichment?	Subrogation - Memo 371 - VP C.docx	R055-003287116-R055-003397117	Condensed SA	0.11	0	1	0	1	
89	Firman's Fund Inc. Co. v. Maryland Cts. Co., 65 Cal. App. 4th 1279	217-151183	The different equitable principles on which contribution and subrogation are based are reflective of different underlying public policies. The aim of equitable subrogation is to place the burden for a loss on the party who caused the loss, and to prevent the party who caused the loss from being discharged, and to be definitively the loss by the party who caused the loss and who in equity was not primarily liable therefore. (Cillo v. United California Bank, supra, 20 Cal.3d at p. 704, 144 Cal.Rptr. 751, 576 P.2d 466 11 Wilkin, Summary of Cal. Law, supra, Equity, " 169, pp. 848-850.) On the other hand, the aim of equitable contribution is to apportion a loss between two or more insurers who cover the same risk, so that each pay its fair share and one does not profit at the expense of the other. (See Code Civ. Proc., § 1010, and Commentaries to the Code Civ. Proc., § 1010, at pp. 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.)	Aim of equitable subrogation in the insurance context is to place the burden for a loss on the party ultimately liable or responsible for it and by whom it should have been discharged, and to relieve entirely the insurer of the burden of the loss. In contrast, the aim of equitable contribution is to apportion a loss between two or more insurers who cover the same risk, so that each pays its fair share and one does not profit at the expense of the others. West's Ann.Cal.Civ.Code § 1432.	"Is the aim of equitable subrogation to place the burden for loss on the party ultimately responsible for it and by whom it should have been discharged, and to relieve entirely the insurer of the burden of the loss, and in equity was not primarily liable for it?"	Subrogation - Memo 707 - C - SA.docx	R055-003288088-R055-003298889	SA, Sub	0.62	0	0	1	1	

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
	Ward v. Nat'l Lumber & Box Co., 54 Wash. 304	223H+287	There are two principal contentions of the appellant in this case, viz.: (1) That the factory act does not in terms require friction wheels to be guarded, and that therefore the respondent should be charged with the assumption of risk in operating a machine which was not reasonably dangerous, and (2) that the respondent was guilty of contributory negligence in operating said machine in the way he did operate it. The factory act (Laws 1905, p. 164, c. 84, "1) provides for reasonable safeguards for all vats, pans, trimmers, cut-off, gang edger, and other saws, planers, cogs, gears, gearing, shifting, coupling, set screws, live rollers, conveyors, rollers, cone ports, mangles in laundries, and machinery of other or kind, in factories, mills, and workshops, and in places where machinery is used." The act further provides for ventilation and sanitary conditions, guarding of trappings and hatchways, etc.; so that it will be seen from a reading of the act that the evident intention of the Legislature was to protect operatives in factories in every manner and in every particular in which they could be protected, consistent with the reasonable operation of the particular factory which was engaged in the production of lumber. The act further provides for the protection of the health and safety of the employees, and it is stated that the friction wheel, not being specified in the factory act and not being of the same kind or genus as any of the machinery specially mentioned, does not fall under the head of machinery of other or similar kind of a case. Considering the whole scope of the factory act and the evident intention of the legislature, we are unable to reach the conclusion contended for by the appellant. There is no doubt that the general idea is that the general word must be construed and applied to the particular machinery which is specified in the act and that it regards costs associated with deceptive behavior, particularly as it regards violating motion in lime orders, our courts must be alert to the possibility that the lawyer who is violating the order is assuming there will be little or no risk associated with bringing out the damaging material during a long trial. One commentator referred to allowing deceptive behavior as creating a variant of Graham's Law. That is, when two circumstances equal in risk, value is added to the case by the "bad" behavior, and the "good" going because people who can get value for base metal coins will do so in preference to spending their silver. Gideon Kanner, Rambo, Go Home: of Ethics, Tactics and Judges, Trial, September 1991, at 106. In the legal system, if deceptive conduct receives the same currency in the courtroom as proper conduct because the court gives great weight to calendar considerations, the deceptive conduct displaces the proper conduct and the result is an increase in Rambo's. Increased deception in this area could change the nature of the adversarial system for the better.	The factory act, Laws 1905, p. 164, c. 84, entitled "An act providing for the protection and health of employees in factories, mills and workshops where machinery is used," apparent purpose of which is to protect operatives in factories in every particular consistent with reasonable operation, though in terms providing only for safeguards for all vats, pans, trimmers, cut-off gang edger, and other saws, planers, cogs, gearing, shifting, coupling, set screws, live rollers, conveyors, mangles in laundries, and machinery of other similar description," required friction wheels to be guarded.	Does the Factory Act provide safeguard to the machinery and appliances and protect employees in manufacturing establishments?	001411.docx	LEGALCASE-00118845- LEGALCASE-00118847	Condensed SA, Sub	0.82	839	1	1	21,876	9,079
90														
	Garner v. Keweler, 200 Wt. 2d 113	307A+3	To increase the costs associated with deceptive behavior, particularly as it regards violating motion in lime orders, our courts must be alert to the possibility that the lawyer who is violating the order is assuming there will be little or no risk associated with bringing out the damaging material during a long trial. One commentator referred to allowing deceptive behavior as creating a variant of Graham's Law. That is, when two circumstances equal in risk, value is added to the case by the "bad" behavior, and the "good" going because people who can get value for base metal coins will do so in preference to spending their silver. Gideon Kanner, Rambo, Go Home: of Ethics, Tactics and Judges, Trial, September 1991, at 106. In the legal system, if deceptive conduct receives the same currency in the courtroom as proper conduct because the court gives great weight to calendar considerations, the deceptive conduct displaces the proper conduct and the result is an increase in Rambo's. Increased deception in this area could change the nature of the adversarial system for the better.	To increase costs associated with deceptive behavior, particularly as it regards violating motion in lime orders, courts must be alert to the possibility that lawyer who is violating order is assuming there will be little or no risk associated with bringing out damaging material during long trial?		032312.docx	LEGALCASE-00122827- LEGALCASE-00122828	Condensed SA	0.75	0	1	0	1	
91														
	DQuino v. Pandera Lease Co., 612 A.2d 440	413+1	Hence under the Rhode Island Workers' Compensation Act an injured employee is ensured timely and certain, though limited, compensation, in exchange for which he or she gives up the right to pursue an action at law that, although potentially more remunerative, is likely to be protracted and may well be unsuccessful.	"Under the Workers' Compensation Act, injured employees are ensured timely and certain, though limited, compensation, in exchange for which he or she gives up the right to pursue an action at law that, although potentially more remunerative, is likely to be protracted and may well be unsuccessful?"		047719.docx	LEGALCASE-00128724- LEGALCASE-00128725	SA, Sub	0.02	0	0	1	1	
92														
	Beck v. Sapet, 937 So. 2d 945	307A+19	Our trial judges are afforded considerable discretion in managing the pre-trial discovery process in their courts, including the entry of scheduling orders setting out various deadlines to assure orderly pre-trial preparation resulting in timely disposition of the cases. Our trial judges also have a right to expect compliance with their orders, and when parties and/or attorneys fail to adhere to the provisions of these orders, they are in violation of the court's orders.	Trial judges are afforded considerable discretion in managing the pre-trial discovery process in their courts, including the entry of scheduling orders setting out various deadlines to assure orderly pre-trial preparation resulting in timely disposition of the cases.	"We trial judges afforded considerable discretion in managing the pre-trial discovery process in their courts, including the entry of scheduling orders setting out various deadlines to assure orderly pre-trial preparation resulting in timely disposition of the cases?"	Pretrial Procedure - Memo # 1666 - C- KG.docx	ROSS-003286279-ROSS-003286280	Condensed SA	0.45	0	1	0	1	
93														
	Hyong v. Lewicki, 811 A.2d 46	307A+86	Hyong argues that a different standard applies when a request to withdraw or amend admissions is made at trial rather than before, under cases interpreting Rule 36. Although district courts have considerable discretion over whether to permit withdrawal or amendment of admissions made pursuant to Rule 36, once trial has begun on a court may grant a motion to withdraw only if it determines that doing so is warranted. See, e.g., In re: American Automobile Ass'n (Gen'l Elec. Co.), 686 F.2d 665 (1st Cir. 1982). In American Automobile Ass'n (In re: AAA Legal Clinic of Jefferson Crooke, P.C.), 930 F.2d 117 (5th Cir. 1991), where a district court sua sponte deemed one admission to be withdrawn and disregarded another, the court stated that the fact that the party found more credible by the district court might lose a lawsuit because of its patent disregard of procedural rules does not rise to the level of manifest injustice.	Although district courts have considerable discretion over whether to permit withdrawal or amendment of admissions made pursuant to rule governing requests for admission, once trial has begun a court may grant a motion to withdraw only if it determines that doing so is necessary to prevent manifest injustice. Rules Civ.Proc., Rule 4014, 42 Pa.C.S.A.	"Although district courts have considerable discretion over whether to permit withdrawal or amendment of admissions made pursuant to rule governing requests for admission, once trial has begun a court may grant a motion to withdraw only if it determines that doing so is necessary to prevent manifest injustice?"	Pretrial Procedure - Memo # 2906 - C- NS.docx	ROSS-003305109-ROSS-003305110	SA, Sub	0.65	0	0	1	1	
94														

ROW	Judicial Opinion	WKS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
95	Joyce v. FordMotor Co., 198 Cal App 4th 4478	307A+478	Code of Civil Procedure section 203.010 allows any party to a civil action to obtain discovery "by a written request that to any other party to the action admit... the truth of specified matters of fact; opinion relating to fact; or application of law to fact." (Italics added.) Thus, "when a party is served with a request for admission concerning a legal question, property rights, or a question of law, the party has the opportunity to admit or deny the request calls for a conclusion of law. He should make the admission if he is able to do so and does not to good faith intend to contest the issue at trial, thereby "settling at rest a triable issue." "[Citation]. Otherwise he should set forth in detail the reasons why he ca not truthfully admit or deny the request. [Citation]." (Burke v. Superior Court (1999) 71 Cal.2d 276, 282, 78 Cal.Rptr. 481, 45 P.2d 409; see Campbell v. Superior Court (2002) 29 Cal.2d 462, 13 Cal.Rptr.2d 754, 128 S.Ct. 3033. Any matter admitted to a request for admission is conclusively established and cannot be contested against the party making the admission... unless the court has permitted withdrawal or amendment of that admission under [Code of Civil Procedure section] 203.300. [Code Civ. Proc., "203.340, subd. (e), (italics added; see also Morroy v. City of Los Angeles (2008) 164 Cal.App.4th 248, 259-260, 78 Cal.Rptr.3d 738 (city conclusively admitted police officer was not exempt from liability pursuant to Vehicle Code section 21053)].	"When a party is served with a request for admission concerning a legal question properly raised in the pleadings, he should make the admission if he is able to do so and does not in good faith intend to contest the issue at trial, thereby settling at rest a triable issue, and otherwise he should set forth in detail the reasons why he cannot truthfully admit or deny the request for admission. He should make the admission if he can do so on a condition of law. West's Ann.Cal.C.P. § 203.010.		030203.docx	LEGALBASE-00135987-LEGALBASE-00135988	Order, SA	0.66	839	15,344	14,873	21,876	9,029
96	Indianapolis-Marion Cty. Pub. Library v. Shook, 858 NE.2d 533	307A+534	In resolving this issue, we first note that the party challenging a trial court's subject matter jurisdiction bears the burden of proving that jurisdiction does not exist. Methodist Hosp. of Ind., Inc. v. Ray, 551 U.S. 463, 467 (Ind. Ct.App.1990), adopted in 558 N.E.2d 829 (Ind.1990). Subject to this, the parties have the power to stipulate to the facts of a case. See, e.g., Miller v. County of Elkhart, 544 N.E.2d 449, 451 (Ind.1989). When reviewing a Trial Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction, the relevant question is whether the type of claim presented falls within the general scope of the authority conferred upon the court by constitution or statute. Cmty. Hosp. v. Aiant, 790 N.E.2d 585, 586 (Ind.Ct.App.2003). The trial court may consider facts outside the pleadings in ruling on a motion to dismiss. Perry v. Slater Buick GMC, Inc., 637 N.E.2d 1282, 1286 (Ind.1994).	"When reviewing a motion to dismiss for lack of subject matter jurisdiction, the relevant question is whether the type of claim presented falls within the general scope of the authority conferred upon the court by constitution or statute. Trial Procedure Rule 12B(1).	Pretial Procedure- Memo F 6003 - C- Da.docx	R055-00328904E-R055-003289047	Order, SA, Sub	0.72	1	0	1	1	1	
97	United States v. Bagan, 499 F.2d 1376	110+533	Where dates for hearing of motions for trial on charges of violating wiretapping and wiretap device provisions of Omnibus Crime Control Act were rearranged to afford defendant's new counsel an adequate opportunity to raise defenses peculiar to its field of expertise, trial court's decision to grant a continuance of trial on charges of violating the Act before scheduled trial date, for a continuance to permit new counsel, who had a trial commitment elsewhere, to conduct defense. In the instant case, promptly after defendant was arraigned and his trial scheduled for a date approximately 60 days thereafter, defendant employed counsel having, in his view, special expertise in defense of the crime with which defendant was charged. Although the district court adjusted its schedule to permit this new attorney to participate in pretrial motions which were to be heard on the day of defendant's arraignment, the court nevertheless declined a continuance to permit this attorney, who held a previous trial commitment, to participate in the trial of the case. In oral argument, we were told that a continuance of a few days would have been all that was required to permit defendant to be tried, presented by the lawyer of his choice.	Will the court abuse its discretion in denying motion for continuance to permit new counsel to conduct defense?	031112.docx	LEGALBASE-00141485-LEGALBASE-00141486	Condensed, SA, Sub	0.53	0	1	1	1	1	
98	Kenny v. Banks, 288 Conn. 529	307A+554	"[A] challenge to the jurisdiction of the court presented a question of law, over which our review is plenary." Ryan v. Cennello, 282 Conn. 109, 118, 918 A.2d 867 (2007). "When a defendant challenges personal jurisdiction in a motion to dismiss, the court must undertake a two-part inquiry to determine the propriety of its exercising such jurisdiction over the defendant; trial court must first decide whether the applicable state long-arm statute authorizes the determination. The trial court must first decide whether the applicable state long-arm statute authorizes the assertion of jurisdiction over the defendant. If the court determines that the long-arm statute authorizes jurisdiction, it then decides whether the exercise of jurisdiction over the defendant would violate constitutional principles of due process. U.S.C.A. Const. Amend. 14.	When a defendant challenges personal jurisdiction in a motion to dismiss, must the court undertake a two-part inquiry to determine the propriety of its exercising such jurisdiction over the defendant?"	Pretial Procedure- Memo F 6166 - C- BP.docx	R055-00328958E-R055-003289588	Condensed, SA	0.52	0	1	0	1	1	
99	Long v. Eblorno, 376 Ill. App. 3d 970	307A+560	In the present case, Long cites Segal v. Sacco, 136 Ill.2d 272, 344 Ill.Doc. 360, 555 N.E.2d 719 (1990) in support of its argument that it exercised reasonable diligence in effectuating service on Kuhn. The supreme court in Segal identified the following sequence of events: (1) the activities of the plaintiff's attorney in effectuating service on Kuhn; (2) the activities of the plaintiff's attorney in effectuating service on Kuhn; (3) the activities of the plaintiff's attorney in effectuating service on Kuhn; (4) the activities of the plaintiff's attorney in effectuating service on Kuhn; (5) the activities of the plaintiff's attorney in effectuating service on Kuhn; (6) the activities of the plaintiff's attorney in effectuating service on Kuhn; (7) the activities of the plaintiff's attorney in effectuating service on Kuhn; (8) the activities of the plaintiff's attorney in effectuating service on Kuhn; (9) the activities of the plaintiff's attorney in effectuating service on Kuhn; (10) the activities of the plaintiff's attorney in effectuating service on Kuhn; (11) the activities of the plaintiff's attorney in effectuating service on Kuhn; (12) the activities of the plaintiff's attorney in effectuating service on Kuhn; (13) the activities of the plaintiff's attorney in effectuating service on Kuhn; (14) the activities of the plaintiff's attorney in effectuating service on Kuhn; (15) the activities of the plaintiff's attorney in effectuating service on Kuhn; (16) the activities of the plaintiff's attorney in effectuating service on Kuhn; (17) the activities of the plaintiff's attorney in effectuating service on Kuhn; (18) the activities of the plaintiff's attorney in effectuating service on Kuhn; (19) the activities of the plaintiff's attorney in effectuating service on Kuhn; (20) the activities of the plaintiff's attorney in effectuating service on Kuhn; (21) the activities of the plaintiff's attorney in effectuating service on Kuhn; (22) the activities of the plaintiff's attorney in effectuating service on Kuhn; (23) the activities of the plaintiff's attorney in effectuating service on Kuhn; (24) the activities of the plaintiff's attorney in effectuating service on Kuhn; (25) the activities of the plaintiff's attorney in effectuating service on Kuhn; 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	People v. Jackson, 178 Cal. App. 4th 590	3:771+10	It is important to remember that the crime of criminal threat, or attempted criminal threat, punishes speech and, consequently, risks offending the First Amendment. But, as Toledo explained, "penalizing speech does not offend First Amendment principles as long as," "the relevant statute singles out for punishment threats falling outside the scope of First Amendment protection." (Toledo, supra, 26 Cal.4th at p. 233, 109 Cal.Rptr.2d 315, 26 P.3d 1051, quoting Irre (M.S. [1995] 10 Cal.4th 698, 710, 42 Cal.Rptr.2d 355, 896 P.2d 1365). "When a reasonable person would foresee that the context and import of the words will cause the listener to believe he or she will be subjected to physical violence, the threat falls outside First Amendment protection." (Toledo, supra, at p. 233, 109 Cal.Rptr.2d 315, 26 P.3d 1051, italics added by Toledo.) In drafting the current version of section 422, the legislature intended the punishment for criminal threats to be applied to speech that falls outside First Amendment protection. (Toledo, supra, at p. 233, 109 Cal.Rptr.2d 315, 26 P.3d 1051.) Punishment for an attempted criminal threat must reach no further. By insisting that the intended threat be evaluated from the point of view of a reasonable person under the circumstances of the case, we can insure that punishment will apply only to speech that clearly falls outside First Amendment protection. We conclude that in order to support a conviction for attempted criminal threat the jury must find that the defendant specifically intended to threaten to commit a crime resulting in death or great bodily injury with the further intent that the threat be taken as a threat, under circumstances sufficient to convey to the person so as to reasonably cause the person to be in sustained fear for his or her own safety or for his or her family's safety. (Toledo, supra, 26 Cal.4th at pp. 239-243, 109 Cal.Rptr.2d 315, 26 P.3d 1051.)	In order to support a conviction for attempted criminal threat, the jury must find that the defendant specifically intended to threaten to commit a crime resulting in death or great bodily injury with the further intent that the threat be taken as a threat, under circumstances sufficient to convey to the person threatened a gravity of purpose and an immediate prospect of execution so as to reasonably cause the person to be in sustained fear for his or her own safety or for his or her family's safety. (Toledo, supra, 26 Cal.4th at pp. 239-243, 109 Cal.Rptr.2d 315, 26 P.3d 1051, 422.	What must the jury find the defendant intended to do in order to support a conviction for attempted criminal threat?	046692.docx	LEGALASE-00156508- LEGALASE-00156509	SA, Sub	0.72	839 0	0	15,344 0	14,873 1	21,876 1	9,029
105															
	Houser v. City of Volusia, 25 So. 3d 75	307A+663	Before a trial court can dismiss a case with prejudice under these circumstances, it must consider all of the following factors: 1) whether the attorney's disobedience was willful, deliberate, or contemptuous, rather than an act of neglect or inexperience; 2) whether the attorney has been previously sanctioned; 3) whether the client was personally involved in the act of disobedience; 4) whether the delay prejudiced the opposing party through undue expense, loss of evidence, or in some other fashion; 5) whether the attorney offered reasonable justification for the noncompliance; and 6) whether the delay created significant problems of judicial administration. Kozel, 629 So.2d at 818. When, as here, there is no indication that the court considered these factors because it failed to make findings addressing these factors in its order, reversal is required. Sealla v. Maronett Int'l, Inc., 995 So.2d 1066 (Fla. 5th DCA 2008).	Before a trial court can dismiss a case with prejudice for disobedience of court orders it must consider: (1) whether the attorney's disobedience was willful, deliberate, or contemptuous, rather than an act of neglect or inexperience; (2) whether the attorney has been previously sanctioned; (3) whether the client was personally involved in the act of disobedience; (4) whether the delay prejudiced the opposing party through undue expense, loss of evidence, or in some other fashion; (5) whether the attorney offered reasonable justification for the noncompliance; and (6) whether the delay created significant problems of judicial administration.	What are the factors to be considered before a trial court can dismiss a case with prejudice for disobedience of court orders?	024991.docx	LEGALASE-00157534- LEGALASE-00157535	SA, Sub	0.3	0	0	1	1	1	
	Deatch v. Becker, 698 A.2d 94	307A+699	In order to prove entitlement to relief from a non pro judgment, the burden is upon the moving party to demonstrate that: (1) a petition to open and/or strike the judgment was promptly filed; (2) a reasonable explanation or legitimate excuse exists for the default or delay; and (3) there exist sufficient facts to support a cause of action. See, e.g., Peterson v. Whitfield, Inc., 444 P.3d 947, 477, 489-91, 664 A.2d 172, 174 (1995); Pine Township, 425 P.3d 947, 477, 489-91, 664 A.2d at 706.	In order to prove entitlement to relief from non pro judgment, burden is upon moving party to demonstrate that petition to open and/or strike judgment was promptly filed, reasonable explanation or legitimate excuse exists for default or delay, and there exist sufficient facts to support a cause of action.	"In order to prove entitlement to relief from non pro judgment, is the burden upon a moving party to demonstrate that a petition to open and/or strike judgment was promptly filed?"	Pretial Procedure - Memo 11188 - C - AC_64357.docx	ROSS-003294501	Condensed, SA	0.37	0	1	0	1	1	
107															
	United States v. Coughlin, 610 F.3d 89	1339+100.1	In addition to barring retrial of a charge upon which a defendant was acquitted, Yeager, 329 S.Ct. at 2865-66, the Double Jeopardy Clause precludes the Government from re-litigating a jury issue that was necessarily decided by a jury's verdict in a prior trial." Id. at 2386. "To decide what a jury has necessarily decided," Yeager reaffirmed, "courts should "examine the record of a prior proceeding, taking into account the pleadings, evidence, charge, and other relevant matter, and conclude whether a rational jury could have grounded its verdict upon an issue other than that which the defendant seeks to introduce on reconsideration." Id. at 2367 (quoting Ash, 397 U.S. at 444, 90 S.Ct. 1189). This "inquiry" must be set in a practical frame and viewed with an eye to all the circumstances of the proceedings. " Id. (quoting Ash, 397 U.S. at 444, 90 S.Ct. 1189).	To decipher what issues the jury has necessarily decided on acquitted charges, as would bar re-litigation of those issues under the Double Jeopardy Clause, courts should examine the record of a prior proceeding, taking into account the pleadings, evidence, charge, and other relevant matter, and conclude whether a rational jury could have grounded its verdict upon an issue other than that which the defendant seeks to introduce on reconsideration; this inquiry must be set in a practical frame and viewed with an eye to all the circumstances of the proceedings.	"To decipher what issues the jury has necessarily decided on acquitted charges, as would bar re-litigation of those issues under the Double Jeopardy Clause, should courts examine the record of a prior proceeding, taking into account the pleadings, evidence, charge, and other relevant matter, and conclude whether a rational jury could have grounded its verdict upon an issue other than that which the defendant seeks to introduce on reconsideration; this inquiry must be set in a practical frame and viewed with an eye to all the circumstances of the proceedings."	Double Jeopardy - Memo 782 - C - TJ.docx	LEGALASE-00055365- LEGALASE-00055366	SA, Sub	0.33	0	0	1	1	1	
108															
	United States v. Rich, 389 F.2d 1025	1339+999	The foregoing detailed review discloses, in summary, that Jeopardy attaches in a criminal trial when the jury is empaneled and sworn and that the Double Jeopardy Clause prevents a subsequent prosecution of a defendant whose previous trial has ended with the discharge of the jury before it has rendered a verdict, unless findings of manifest necessity justify the trial court's discharge of the first jury appear by express declaration of the court, regardless of the terminology of the order or are apparent from the trial court record, or (2) the defendant consents to a trial court's order discharging the jury upon either the Government's or the trial court's motion, or waives the right to later	Jeopardy attaches in criminal trial when jury is impaneled and sworn, and double jeopardy clause prevents subsequent prosecution of defendant whose previous trial has ended with discharge of a first jury on ground of double jeopardy be found only on rare occasions?	Will the answer to a question whether a discharge of a first jury prevents trial of a defendant before a second jury on ground of double jeopardy be found only on rare occasions?	015837.docx	LEGALASE-00166631- LEGALASE-00166632	Condensed, SA	0.06	0	1	0	1	1	
109															

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110	Alvis v. CIT Grp./Equip. Fin., 938 So. 2d 1177	366+33[1]	"Subrogation is the substitution of one person to the rights of another." A.C. Code art. 1825. It is the legal fiction established by law whereby an obligation extinguished with regard to the original creditor by payment by a third person is substituted in favor of the third person as if he were the debtor but with funds that a third person has provided, is regarded as substituting in favor of this third person who in essence steps into the shoes of the original debtor and is entitled to assert, in the measure of what he has paid, the rights and actions of the former creditor. LSA-C.C. art. 1825.	"Subrogation" is the legal fiction established by law whereby an obligation extinguished with regard to the original creditor by payment by a third person is substituted in favor of the third person as if he were the debtor but with funds that a third person has provided, is regarded as substituting in favor of this third person who in essence steps into the shoes of the original debtor and is entitled to assert, in the measure of what he has paid, the rights and actions of the former creditor. LSA-C.C. art. 1825.	Is subrogation the legal fiction established by law whereby an obligation extinguished with regard to the original creditor by payment by a third person is substituted in favor of the third person?	Subrogation - Memo 350 - MS C.docx	ROSS-00325086-ROSS-003325067	Condensed SA	0.51	0	1	0	21,876	9,079
111	Hourani v. Mirtchev, 796 P.3d 1	221+42	"For that reason, the Embassy's statements on domestic matters, foreign affairs, and international relations are not subject to the scrutiny of the sovereign and diplomatic communication. The very communications the amended complaint puts into issue here" must be treated as the voice of the Kazakhstani government itself articulating its views as officially formulated and dictated from within its own territory. Whatever Mirtchev's role in their provenance, once the statements appeared on the official Embassy website with the active approval and support of the Ambassador, they became the official speech of the Kazakh government. Trying this case against the Embassy's statements is like trying to sue the government for its official speech about its constitutional and activities is the kind of "strictly sovereign" act and "normal governmental action" concerning internal affairs that triggers the Act of State doctrine's and international comity's traditional concerns. McKesson Corp. v. Islamic Republic of Iran, 672 F.3d 1066, 1073 (10th Cir.2022); see also Riggs Nat'l Corp. v. Commissioner of Internal Revenue Service, 363 F.3d 1363, 1366 ("1368 (D.C. Cir. 1999) [upholding Act of State doctrine to an order by a foreign finance minister].	A decision by a foreign government to engage in official speech about its domestic affairs, foreign affairs, and international relations is regarded as the act of state doctrine's and international comity's traditional concerns.	Is a decision by a foreign government to engage in official speech about its domestic affairs, foreign affairs, and international relations regarded as the act of state doctrine's and international comity's traditional concerns?	015938.docx	LEGASE-00123613-LEGASE-00123614	SA, Sub	0.76	0	0	1	1	
112	Allstate Ins. Co. v. Palumbo, 109 Conn. App. 731	366+1	"As our Supreme Court has explained, [the right of [equitable] subrogation] is a matter of contract; it does not arise from any contractual relationship between the parties, but takes place as a matter of equity, with or without an agreement to that effect. It is designed to [equitable] subrogation is the prevention of injustice. It is designed to promote and to accomplish justice and is the mode which equity adopts to prevent injustice. It is a matter of equity, and equity, in its discretion, and good conscience, should pay it. As now applied, the doctrine of equitable subrogation is broad enough to include every instance in which one person, not acting as a mere volunteer or intruder, pays a debt for which another is primarily liable, and which in equity and good conscience should have been discharged by the latter." (Internal quotation marks omitted) Warning Lights & Scaffold Service, Inc. v. O & C Industries, Inc., 102 Conn.App. 267, 272, 925 A.2d 359 (2007).	The doctrine of equitable subrogation is broad enough to include every instance in which one person, not acting as a mere volunteer or intruder, pays a debt for which another is primarily liable, and which in equity and good conscience should have been discharged by the latter.	"Is the doctrine of equitable subrogation broad enough to include every instance in which one person, not acting as a mere volunteer or intruder, pays a debt for which another is primarily liable, and which in equity and good conscience should have been discharged by the latter?"	Subrogation - Memo 387 - RM C.docx	ROSS-003283860-ROSS-003383862	Condensed SA	0.82	0	1	0	1	
113	Cortman Transmission Sys. v. Kershner, 536 F. Supp. 2d 543	257+182[2]	"[P]rejudice is the touchstone for determining whether the right to arbitrate has been waived by litigation." Id. at 222. To make this determination, courts consider a list of factors, including: 1) "the timeliness or lack thereof of a motion to arbitrate"; 2) "the degree to which the party seeking to compel arbitration has contested the merits of its opponent's claims"; 3) "whether that party has informed its adversary of the intention to seek arbitration even if it is not a condition precedent to arbitration"; 4) "the extent of its non-movant's pretrial orders"; and 6) "the extent to which both parties have engaged in discovery."	Prejudice is the touchstone for determining whether the right to arbitrate has been waived by litigation; to make this determination, courts consider factors, including: (1) timeliness or lack thereof of a motion to arbitrate; (2) the degree to which the party seeking to compel arbitration has contested the merits of its opponent's claims; (3) whether that party has informed its adversary of the intention to seek arbitration even if it is not a condition precedent to arbitration; (4) the extent of its non-movant's pretrial orders; and (6) the extent to which both parties have engaged in discovery.	What are the factors considered by the Court to determine whether waiver has occurred?	Alternative Dispute Resolution - Memo 14 - JS.docx	LEGASE-0000084-LEGASE-0000086	Condensed SA	0.05	0	1	0	1	
114	In re Grand Jury Subpoena dated Aug. 3, 2000, 238 F. Supp. 2d 544	221+42	"Under the doctrine, 'the assessment of the validity of a foreign law is limited to its application within the sovereign's territory, and where the latter sought the defense interposed in the present case, it is a court to determine whether the defense is applicable. The court to determine whether the defense is applicable, and the doctrine may apply if the validity of acts of a foreign sovereign will be passed on by the court. Hurt v. Mobil Oil Corp., 550 F.2d 68, 75-78 (2d Cir. 1977).	"Under the act of state doctrine, assessment of the validity of a foreign law is limited to its application within the sovereign's territory, and where the latter sought the defense interposed in the present case, it is a court to determine whether the defense is applicable. The court to determine whether the defense is applicable, and the doctrine may apply if the validity of acts of a foreign sovereign will be passed on by the court.	"Under the act of state doctrine, is the assessment of the validity of a foreign law limited to its application within the sovereign's territory, and where the latter sought the defense interposed in the present case, it is a court to determine whether the defense is applicable. The court to determine whether the defense is applicable, and the doctrine may apply if the validity of acts of a foreign sovereign will be passed on by the court."	International Law - Memo #258 - C-ANC.docx	ROSS-00328591-ROSS-00328592	SA, Sub	0.38	0	1	1	1	

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115	State v. Jack, 125 F.3d 311, 221-136		Since the State has high seas jurisdiction under AS 44.01.01(2) only to the extent that the United States also has jurisdiction, we discuss next why the United States could exercise jurisdiction in this case. United States criminal jurisdiction exists over crimes committed on United States flagged ships, even when they are in foreign territorial water, if the local flag state has jurisdiction over the crime. The United States has not asserted jurisdiction over the crime of piracy, but it has asserted jurisdiction over the crime of kidnapping on foreign vessels unless the "peace or dignity of the country, or the tranquility, [tranquility] of the port" is involved. Under the right of innocent passage doctrine, a coastal nation is not authorized to assert jurisdiction over a foreign vessel unless the consequences of the crime extend to the coastal State, or "the crime is of a kind to disturb the peace of the country or the good order of the territorial sea."	Under the "right of innocent passage doctrine," a coastal nation is not authorized to assert jurisdiction over a foreign vessel unless the consequences of the crime extend to the coastal State, or the crime is of a kind to disturb the peace of the country or the good order of the territorial sea?		02038.docx	LEGALAE-00124163-LEGALAE-00124164	Condensed, SA	0.77	839	15,344	14,873	21,876	9,029
116	Baldwin Civ. Elec. Div. v. Greyhound Lines, Inc., 448 U.S. 1	307A-3	A motion in limine seeking to exclude evidence, which is denied by the trial court, is a matter for the court to decide. In this context, the trial court's decision to deny the motion is not a final ruling on the subject evidence when it is offered and is not a final ruling made in a pre-trial context. Owens-Corning Fiberglas Corp. v. James, 646 So.2d 669, 673 (Ala.1994) (citing Baxter v. Surgical Clinic of Aniston, P.A., 495 So.2d 652 (Ala.1986)). This Court in Owens-Corning continued, stating as follows: "An appellant who suffers an adverse ruling on a motion to exclude evidence, made in limine, preserves this adverse ruling for post-judgment and appellate review only if he objects to the ruling at the time of the trial, unless he has obtained the express acquiescence of the trial court that subsequent objection to evidence when it is proffered at trial and assignment of grounds therefor are not necessary." 646 So.2d at 669 (citing Liberty Nat'l Life Ins. Co. v. Beasley, 466 So.2d 935 (Ala.1985)).	A motion in limine seeking to exclude evidence, which is denied by the trial court, is a matter for the court to decide. In this context, the trial court's decision to deny the motion is not a final ruling on the subject evidence when it is offered and is not a final ruling made in a pre-trial context.	"Is a motion in limine seeking to exclude evidence, which is denied by the trial court, a matter for the court to decide? In this context, the trial court's decision to deny the motion is not a final ruling on the subject evidence when it is offered and is not a final ruling made in a pre-trial context?"	Pretial Procedure- -00283763	ROSS-003283761-ROSS-003283763	Condensed, SA	0.71	0	1	0	1	1
117	Fairheadme Burd v. United States, 132 Fed. Cl. 49	393A-031	In a recent ruling on a motion to file an amicus curiae brief, this court observed "The Rules of the United States Court of Federal Claims, which largely mirror the Federal Rules of Civil Procedure, do not provide for the participation of amicus curiae. Nevertheless, the court possesses the inherent authority to allow such participation, and has broad discretion to exercise that authority. Am. Satellite Co. v. United States, 22 Fed. Cl. 547, 549 (1993). When deciding whether to allow the participation of an amicus curiae, the court may consider a number of factors, including whether the amicus will be useful to the court, whether the amicus will be useful to the court as contrasted with simply strengthening the assertions of one party," Id.; (2) whether the parties consent to the participation of the amicus curiae, Id.; (3) whether "one of the parties is not interested in or capable of fully presenting one side of the argument," Id.; (4) whether "the court's decision would directly affect [the movant's] rights or would set a controlling precedent regarding a claim of [the movant]," Fluor Corp., 35 Fed.Cl. at 281; and (5) whether participation of an amicus curiae would be useful to the court. See also, Accord: Worldwid v. United States, 62 Fed.Cl. 521, 536 (2004); See also Hage v. United States, 35 Fed.Cl. 737, 742 (1996) (allowing the participation of amicus curiae who possessed "specialized knowledge" that could be "beneficial to the court in the resolution of [the] case").	When deciding whether to allow the participation of an amicus curiae, the Court of Federal Claims may consider a number of factors, including: (1) whether the court is persuaded that participation by the amicus will be useful to it, as contrasted with simply strengthening the assertions of one party, (2) whether the parties consent to the participation of the amicus curiae, (3) whether one of the parties is not interested in or capable of fully presenting one side of the argument, (4) whether the court's decision would directly affect the movant's rights or would set a controlling precedent regarding a claim of the movant, and (5) whether participation of an amicus curiae would be useful to the court as contrasted with participation by an amicus curiae would unnecessarily delay the litigation.	What discretion and authority is available as the Courts of Federal Claims in allowing participation by amicus curiae?	Amicus Curiae- Memo - -5.Ddoc	ROSS-003286870-ROSS-003336871	Condensed, SA, Sub	0.53	0	1	1	1	1
118	Thatcher v. U. S. Lab. Ins. Co., 19 N.Y.2d 159	272A-508	Although Glazier, Glazier & Evans was helplessly representing Kelley in reality, they were representing the interest of the insurance company. [Othman v. Aema Ins. Co., 15 N.Y.2d 111, 118-119, 256 N.Y.2d 577, 587-584, 204 N.E.2d 622, 626-627; Bearer v. Kapile, Sup., 24 N.Y.2d 655, 658-659; cf. Bennett v. Troy Record Co., 25 AD.2d 799, 289 N.Y.S.2d 213]. The law maintains the fiction that the insured is the real party in interest at the trial of the underlying negligence action in order to protect the insurance company against overly sympathetic juries (see Leotta v. Leotta, 13 N.Y.2d 321, 314-322, 454 A.2d 459-460). Once a judgment has been rendered, however, the fiction no longer exists for the factor of insurance is now one of the essential elements of the pending cause of action (see Othman v. Aema Ins. Co., supra, 15 N.Y.2d p. 118, 256 N.Y.2d p. 582, 204 N.E.2d p. 626). To hold that service on the attorney retained by the insurance company does not constitute service upon the insurer only serves to perpetuate this fiction. That it is a fiction is undeniably demonstrated by the presence of the insurer in the litigation. The insurer is the party who paid for the negligence action. The investigator who attempted to locate Kelley was employed by Glazier, Glazier & Evans. All the requests for a disclaimer of liability prior to and during the trial of the negligence action were directed not to the insurance company but to Kelley's attorneys. When the insurance company finally disclaimed liability one day after the notice of entry had been served upon Glazier, Glazier & Evans, they did so by a disclaimer that was not directed to the insurer. The disclaimer was, in this suit on the judgment, the insurance company was represented by this same firm rather than by their own house counsel.	The law maintains the fiction that the insured is real party in interest at trial of underlying negligence action in order to protect insurer against overly sympathetic juries, but once judgment has been rendered and suit is subsequently brought against insurance company on judgment against insured, reason for fiction no longer exists, since factor of insurance is then one of essential elements of pending cause of action, Insurance Law, § 167, subd. 1(b).	"Is the fiction that the law maintains, i.e., that the insured is the real party in interest at the trial of underlying negligence actions, only to protect the insurance company against overly sympathetic juries?"	031683.docx	LEGALAE-00125216-LEGALAE-00125237	Condensed, SA, Sub	0.77	0	1	1	1	1

[illegible]

ROW	Judicial Opinion	WIXS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
124	Silverberg v. Hylj, 2015 IL App (1st) 141321	307A-560	The trial court's determination of a plaintiff's lack of diligence is an objective one and "a fact-intensive inquiry suited to balancing, not bright lines." [Internal quotation marks omitted] McRoberts v. Bridgestone Americas Holding, Inc., 365 Ill.App.3d 1089, 340J.303 Ill.Doc. 585, 585 N.E.2d 772 (2006). As such, Rule 103(b) does not set a particular time period for plaintiffs to discover or investigate facts relevant to their claim to consider "the passage of time in relation to all the other facts and circumstances of each case individually." Case v. Gatesburg Cottage Hospital, 227 Ill.2d 207, 316 Ill.Doc. 693, 830 N.E.2d 371 (2007). The relevant factors to consider when determining whether to grant a Rule 103(b) motion, include, but are not limited to: (1) the length of time used to obtain service of process; (2) the activities of plaintiff; (3) plaintiff's knowledge of defendant's location; (4) the ease with which defendant could have been located; (5) the diligence exercised by the part of the defendant responsible for the service; (6) the results of ineffective service; (6) special circumstances which would affect plaintiff's efforts; and (7) actual service on defendant. Segal, 136 Ill.2d at 287, 144 Ill.Doc. 360, 355 N.E.2d 719.	The relevant factors to consider when determining whether to grant a motion to dismiss based on plaintiff's lack of reasonable diligence in serving a defendant, include, but are not limited to: (1) the length of time used to obtain service of process, (2) the activities of plaintiff, (3) plaintiff's knowledge of defendant's location, (4) the ease with which defendant could have been located, (5) the diligence exercised by the part of the defendant responsible for the service, (6) the results of ineffective service, (6) special circumstances which would affect plaintiff's efforts, and (7) actual service on defendant. Segal, Rule 103(b).	"In ruling on a motion to dismiss for lack of diligence in service of process, can a court consider the following nonexclusive factors?"	033623.docx	LEGALBASE-00143892- LEGALBASE-00143893	SA, Sub	0.43	839 0	15,344 0	14,873	21,876	9,029
125	United States v. Blagoff, 930 F.2d 602	164F-24(6)	For example, if a Congressman demands a payment for taking official action on behalf of his constituents, it is not enough that he has no personal or pecuniary interest in the transaction. He may be without any financial stake in the transaction, yet still be acting in his own self-interest. If he instructs a payer to retain his son's law firm for needed services and to pay sum for both firm's legal services and his own official action; in such cases, however, evidence must suffice to permit jury to find beyond reasonable doubt that unlawful purposes were of substance, not merely vague possibilities that might attend otherwise legitimate transaction. 18 U.S.C.A. § 1591.	If United States congressman demands payment for taking official action on behalf of his constituents, it is not enough that he has no personal or pecuniary interest in the transaction. He may be without any financial stake in the transaction, yet still be acting in his own self-interest. If he instructs a payer to retain his son's law firm for needed services and to pay sum for both firm's legal services and his own official action; in such cases, however, evidence must suffice to permit jury to find beyond reasonable doubt that unlawful purposes were of substance, not merely vague possibilities that might attend otherwise legitimate transaction. 18 U.S.C.A. § 1591.	Is it possible that a payment to law firm become unlawful under bribery statutes?	011770.docx	LEGALBASE-00146349- LEGALBASE-00146350	SA, Sub	0.47	0	0	1	1	
126	Potomac v. State, 245 Ga. App. 35	135H-95.1	Although the trial judge should also explain on the record that he or she found the defendant's failure to disclose material information to the lower court failed to do so here, "does not, standing alone, render [his] determination so unwarranted as to preclude the defendant's retrial on grounds of former jeopardy." Terrell, 236 Ga.App. at 165, 511 S.E.2d 555, 2003 So. 2d 555, 213 Ga.App. 711, 443 S.E.2d 650 (1994), is distinguishable because there, "[t]he trial court gave appellant no opportunity before declaring mistrial either to object thereto or to present an argument as to the appropriate means of correcting the error." In contrast, here, the trial court afforded the opportunity to present alternative remedies before declaring mistrial and was required to comment on the mistrial. There is no record of the in-chambers discussion between the trial judge and counsel. Thus, we do not know whether the court considered alternatives to mistrial. But even if the court failed to consider alternatives, such a failure "is more likely to bar retrial in cases involving prosecutorial abuse" than juror bias. Wilson v. State, 217 Ga.App. 544, 545, 485 S.E.2d 686 (1995).	Although the trial judge should explain on the record that he or she found the defendant's failure to disclose material information to the lower court failed to do so here, "does not, standing alone, render [his] determination so unwarranted as to preclude the defendant's retrial on grounds of former jeopardy." Terrell, 236 Ga.App. at 165, 511 S.E.2d 555, 2003 So. 2d 555, 213 Ga.App. 711, 443 S.E.2d 650 (1994), is distinguishable because there, "[t]he trial court gave appellant no opportunity before declaring mistrial either to object thereto or to present an argument as to the appropriate means of correcting the error." In contrast, here, the trial court afforded the opportunity to present alternative remedies before declaring mistrial and was required to comment on the mistrial. There is no record of the in-chambers discussion between the trial judge and counsel. Thus, we do not know whether the court considered alternatives to mistrial. But even if the court failed to consider alternatives, such a failure "is more likely to bar retrial in cases involving prosecutorial abuse" than juror bias. Wilson v. State, 217 Ga.App. 544, 545, 485 S.E.2d 686 (1995).	"Although the trial judge should explain on the record that he or she found the defendant's failure to disclose material information to the lower court failed to do so here, "does not, standing alone, render [his] determination so unwarranted as to preclude the defendant's retrial on grounds of former jeopardy?"	Double Jeopardy - Retrial After Mistrial Criminal Law #E_06806.docx	R055-00327894-R055-00327893	SA, Sub	0.71	0	0	1	1	
127	In re Trask, 462 B.R. 268	366P1	The traditional doctrine of equitable subrogation "enables 'byes who pays, otherwise than as a volunteer, an obligation for which another is primarily liable,' to be 'given by equity the protection of any lien or other security for the payment of the debt to the creditor,' and 'to enforce such security against the principal debtor or collect the obligation from him.' " See Chase Manhattan Bank, USA, N.A.v. Taxel (In re Ouellet), 594 F.3d 1340, 1348 (2d Cir.2010) (quoting Restatement (Second) of Judgments § 34.8(4)). The Supreme Court of Maine has held that equitable subrogation "is a device adopted by equity to compel the ultimate discharge of an obligation by him who in good conscience ought to pay it." Nappo Distrib., 691 A.2d 1198 (Me.1997) (quoting United Carolina Bank v. Beasley, 663 A.2d 574, 576 (Me.1995)). It is "a concept derived from principles of restitution and unjust enrichment." Citing North East Ins. Co. v. Concord Gen. Mut. Ins. Co., 433 A.2d 715, 719 (N.H.1981)). Unlike the doctrines of subrogee, not a lender, loans money to a borrower, and the lender is entitled to recover its money from the discharged mortgagee. Beasley, 663 A.2d at 576; Federal Land Bank of Springfield v. Smith, 129 Me. 233, 151 A. 420 (1930). The doctrine requires that the equities of the parties be weighed and balanced. Beasley, 663 A.2d at 576. "Subrogation, itself a creature of equity, must be enforced with due regard for the rights, legal or equitable, of others. It should not be invoked so as to work injustice, or defeat a legal right, or to deprive anyone of a benefit already secured to him by contract or by intervening right or title." See also Federal Land Bank, 151 A. at 422.	Traditional doctrine of "equitable subrogation" enables one who pays, otherwise than as a volunteer, an obligation for which another is primarily liable, to be given by equity the protection of any lien or other security for the payment of the debt to the creditor, and to enforce such security against the principal debtor or collect the obligation from him.	Town equitable subrogation traditionally enable one who pays, other than as volunteer, an obligation for which another is primarily liable, to be given by equity the protection of any lien or other security for the payment of debt to creditor, and to enforce such security against the principal debtor or collect obligation from him?	Subrogation - Memo 3B5 - RM C.docx	R055-00331304D-R055-003313041	Condemned, SA	0.8	0	1	0	1	

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
128	In re Shavers, 418 B.R. 589	366+1	A more difficult issue arises in determining when to apply the equitable subrogation doctrine. In Mississippi, this doctrine applies, in general, "whenever any person other than a mere volunteer pays a debt or demand which in equity and good conscience should have been satisfied by another, or where one person finds it necessary for his own protection to pay the debt for which another is primarily liable."	In Mississippi, the doctrine of equitable subrogation applies, in general, whenever any person other than a mere volunteer pays a debt or demand which in equity and good conscience should have been satisfied by another, or where one person finds it necessary for his own protection to pay the debt for which another is primarily liable.	"Does the doctrine of equitable subrogation apply, in general, whenever any person other than a mere volunteer pays a debt or demand which in equity and good conscience should have been satisfied by another, or where one person finds it necessary for his own protection to pay the debt for which another is primarily liable?"	Subrogation - Memo 346 - VP.docx	R055-003324195-R055-003324197	SA, Sub	0.71	0	1	14,873	21,876	9,029
	Bremhorst v. Bedman, 227 Minn. 409	92+2625(1)	In the exercise of the police power, the vesting by the legislature in the industrial commission of quasi-judicial powers inclusive of the power to determine facts and apply the law thereto in employment accident controversies is not in violation of state constitutional provisions for the division of the powers of government or for the vesting of judicial power in the courts, as long as the commission's awards and determinations are not only subject to review by certiorari but lack judicial finality in not being subject to review by certiorari and are subject to review by the exercise of a binding judgment entered thereon by duly established court.	In the exercise of police power, the vesting by the legislature in the industrial commission of quasi-judicial powers inclusive of the power to determine facts and apply the law thereto in employment accident controversies is not in violation of state constitutional provisions for the division of the powers of government or for the vesting of judicial power in the courts, as long as the commission's awards and determinations are not only subject to review by certiorari but lack judicial finality in not being subject to review by certiorari and are subject to review by the exercise of a binding judgment entered thereon by duly established court.	Is vesting of quasi-judicial powers in an administrative agency constitutional when its decisions are subject to judicial review?	000339.docx	LEGALCASE-00117691-LEGALCASE-00117692	Condensed, SA, Sub 0.06	0	1	1	1	1	
129	Schwartz v. Hart, 175 S.W.3d 621	366+1	While the double recovery aspect of the collateral source rule and subrogation may appear at first to clash, the two doctrines are compatible. The collateral source rule and the principles of subrogation work in tandem by ensuring that the tortfeasor bears the ultimate responsibility for payment of damages without diminishment for benefits received by the injured party from collateral sources, while preventing double recovery by the injured party from collateral sources, while preventing double recovery by the injured party where the party providing the collateral source benefits seeks reimbursement through subrogation. See Koffman v. Lechtius, 246 W.2d 31, 630 N.W.2d 201, 211 (2001). In effect, the collateral source rule addresses the relationship between the injured party and the tortfeasor, and subrogation focuses more on the relationship between the injured party/insured and the insurer, with the insured being in the shoes of the rights of the injured party against the tortfeasor to the extent of its payments.	Collateral source rule and the principles of subrogation work in tandem by ensuring that the tortfeasor bears the ultimate responsibility for payment of damages without diminishment for benefits received by the injured party from collateral sources, while preventing double recovery by the injured party from collateral sources, while preventing double recovery by the injured party where the party providing the collateral source benefits seeks reimbursement through subrogation.	Does the collateral source rule and the principles of subrogation work in tandem by ensuring that the tortfeasor bears the ultimate responsibility for payment of damages without diminishment for benefits received by the injured party from collateral sources?	043988.docx	LEGALCASE-00121078-LEGALCASE-00121079	Condensed, SA	0.57	0	1	0	1	1
	Orem v. Wrighton, 51 Md. 34	366+1	The doctrine of subrogation, or substitution as it is also termed, is a peculiar feature of equity. It is not founded in contract, but has its origin in a sense of natural justice. So soon as a surety pays the debt of the principal debtor, equity subrogates him to the place of the creditor, and gives him every right, lien and, security, to which the creditor could have resorted for the payment of his debt. As said in the annotation to the case of Dering vs. Earl of Winchelsea, 1 Leading Cases in Eq. 60 (m). "Payment by one who stands in the relation of a surety, although it may extinguish the remedy or discharge the security, as respects the creditor, has not that effect as between the principal debtor and the surety."	The doctrine of subrogation, or substitution, is a peculiar feature of equity. It is not founded in contract, but has its origin in a sense of natural justice. So soon as a surety pays the debt of the principal debtor, equity subrogates him to the place of the creditor, and gives him every right, lien and, security, to which the creditor could have resorted for the payment of his debt. As said in the annotation to the case of Dering vs. Earl of Winchelsea, 1 Leading Cases in Eq. 60 (m). "Payment by one who stands in the relation of a surety, although it may extinguish the remedy or discharge the security, as respects the creditor, has not that effect as between the principal debtor and the surety."	"As soon as surety pays the debt of principal debtor, does equity subrogate him to place of creditor that is paid and give him every right, lien and, security to which creditor could have resorted for payment of debt?"	043957.docx	LEGALCASE-00121185-LEGALCASE-00121186	Condensed, SA	0.47	0	1	0	1	1
131	In re Fresh & Prosser Potatoes Antitrust Litig., 834 F. Supp. 241141.	22+142	UPSC contends that the Act of State Doctrine warrants dismissal because the act of state doctrine bars judicial review of the sovereign's official act claim if (1) there is an official act of a foreign government, (2) the act of state doctrine bars judicial review of a foreign government's official act within its own territory; and (2) the relief sought or the defense interposed in the action would require a court in the United States to declare invalid foreign sovereign's official act.	The act of state doctrine bars judicial review of claim if (1) there is an official act of a foreign government, (2) the act of state doctrine bars judicial review of a foreign government's official act within its own territory, and (3) the relief sought or defense interposed in action would require court in United States to declare invalid foreign sovereign's official act.	Does the act of state doctrine bar judicial review of claim if there is an official act of a foreign sovereign performed within its own territory, and relief is sought or a defense interposed that require a court in United States to declare invalid foreign sovereign's official act?"	International Law - Memo #92 - C - LK.docx	R055-003286110-R055-003286111	Condensed, SA	0.61	0	1	0	1	1
	Gov't of Dominican Republic v. AES Corp., 466 F. Supp. 2d 680	22+142	Even if the above elements were not met, the Court could still apply the act of state doctrine. The doctrine does not take the form of an absolute or inflexible rule, but rather requires a careful case-by-case analysis to determine if, in a particular situation, the conduct of foreign affairs by the executive branch is likely to be vexed or hindered by judicial review of the acts of a foreign government." *Id. at 171 n. 5 (citations omitted). As the Supreme Court noted in Sabbatino, "some aspects of international law touch much more sharply on national nerves than do others; the less important the implications of an issue are for our foreign relations, the less reason we have for excluding it exclusively in the political branches. 376 U.S. at 428, 84 S.Ct. 923.	Does the act of state doctrine does not take the form of an absolute or inflexible rule, but rather requires a careful case-by-case analysis to determine if, in a particular situation, the conduct of foreign affairs by the executive branch is likely to be vexed or hindered by judicial review of the acts of a foreign government?	Does the act of state doctrine require a careful case-by-case analysis to determine if the conduct of foreign affairs by the executive branch is likely to be vexed or hindered by judicial review of the acts of a foreign government?	International Law - Memo #96 - C - LK.docx	R055-003286174-R055-003286174	Condensed, SA	0.58	0	1	0	1	1
133	Mayekawa Mfg. Co. v. Asahi, 76 Wash. App. 791	22+1551	A generally recognized rule of international comity states that an unmodifiable foreign order can be granted extraterritorial effect even though they might not be "final" for purposes of res judicata.	A generally recognized rule of international comity states that an unmodifiable foreign order can be granted extraterritorial effect even though they might not be final for purposes of res judicata.	Does a generally recognized rule of international comity state that an unmodifiable foreign order can be granted extraterritorial effect even though they might not be final for purposes of res judicata?"	International Law - Memo #402 - C - MSL.docx	R055-003312371-R055-003312372	Condensed, SA	0.31	0	1	0	1	1
	Mayekawa Mfg. Co. v. Asahi, 76 Wash. App. 791	22+1551	A generally recognized rule of international comity states that an unmodifiable foreign order can be granted extraterritorial effect even though they might not be "final" for purposes of res judicata.	A generally recognized rule of international comity states that an unmodifiable foreign order can be granted extraterritorial effect even though they might not be final for purposes of res judicata.	Does a generally recognized rule of international comity state that an unmodifiable foreign order can be granted extraterritorial effect even though they might not be final for purposes of res judicata?"	International Law - Memo #402 - C - MSL.docx	R055-003312371-R055-003312372	Condensed, SA	0.31	0	1	0	1	1

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135	In re Blumenthal, 259 F.3d 949	106-512	The Supreme Court opinion in <i>Hilton v. Guyot</i> provides the guiding principle. <i>Comity</i> is defined as recognition which one nation allows within its territory to legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under protection of its laws.	"Comity" is defined as recognition which one nation allows within its territory to legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under protection of its laws."	"Is comity defined as recognition which one nation allows within its territory to legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under protection of its laws?"	020548.docx	LEGALCASE-00125382-LEGALCASE-00125383	Condensed, SA	0.49	839 0	15,344 0	14,873 0	21,876 1	9,079
136	<i>Trugman, Noah v. New Zealand Dairy Bd.</i> , 943 F. Supp. 505	22-1-42	The court declines to give application to this case. <i>New Zealand</i> is a defendant's characterization of the action in their briefs, plaintiffs are not challenging the validity of the New Zealand Dairy Board Act. Rather, plaintiffs challenge the particular conduct indulged in by the defendants pursuant to powers conferred by that statute. It is a necessary factual predicate for application of the act of state doctrine that "the relief sought or the defense interposed would have required a court in the United States to declare invalid the official act of a foreign sovereign performed within its own territory." <i>W.S. Kirkpatrick & Co. v. Environmental Tenders (UK) Ltd.</i> , 493 U.S. 400, 405, 110 S.Ct. 701, 704, 107 L.Ed.2d 816 (1990). I need not declare the Dairy Board Act invalid in order to conclude that the defendants' conduct thereunder violated the Sherman Act. The case at bar may be contrasted with <i>Hunt v. Mobil Oil Corp.</i> , 550 F.2d 688 (2d Cir.1977), in which an independent American oil producer holding a Libyan oil concession asserted an antitrust claim against major American oil companies for conspiring successfully to obtain a Libyan government decree rationalizing plaintiffs' antitrust claim. The court in <i>Hunt</i> found that the government's decree was a party defendant. The Second Circuit observed that "the claim is admittedly not viable unless the judicial branch examines the motivation of the Libyan action and that inevitably involves its validity." 550 F.2d at 77. In that circumstance, the act of state doctrine was applied to bar the antitrust claim. The case at bar does not involve the motivation of a foreign state's nationalization of property within its territory. The New Zealand Parliament's motivation in enacting the Dairy Board Act is irrelevant, and plaintiffs do not challenge the validity of New Zealand's conduct in enacting it.	It is necessary factual predicate for application of act of state doctrine that relief sought or defense interposed would have required court in United States to declare invalid official act of foreign sovereign performed within its own territory.	"Is a necessary factual predicate for the application of an act of state doctrine that relief sought or defense interposed would have required court in United States to declare invalid official act of foreign sovereign performed within its own territory?"	International Law Memo 892 - The.docx	R055-000325946-R055-00325947	Condensed, SA	0.87	0 0	1 1	0 0	1 1	1
137	<i>Mission Mun. Hosp. v. Bryant</i> , 563 S.W.2d 293	307A-742.1	The purpose of a pre-trial hearing is to aid the trial court in narrowing the issues and in disposing of other matters which may aid in the final disposition of the action. The trial court may, in a pre-trial conference, among other things, consider all dilatory pleas and all motions and exceptions relating to a suit pending, the necessity or desirability of amendments to the pleadings, the propriety of granting summary judgment, and other matters as may aid in the disposition of the action. "The court shall make an order which recites the action taken at the pre-trial conference, the amendments allowed to the pleadings, the time within which same may be filed, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered by the court shall be controlling on the parties." <i>Tex. R. Civ. P.</i> 166a. Such an order was not made in the instant case.	The purpose of a pre-trial hearing is to aid the trial court in narrowing the issues and in disposing of other matters which may aid in the final disposition of the action; in a pre-trial conference, the trial court may consider all dilatory pleas and all motions and exceptions relating to a suit pending, the necessity or desirability of amendments to the pleadings, the propriety of granting summary judgment, and other matters as may aid in the disposition of the action. Rules of Civil Procedure, rule 166.	"When can a Trial court in a pre-trial conference among other things, consider all dilatory pleas and all motions and exceptions relating to a suit pending?"	Pretrial Procedure - Memo # 1495 - C- NC.docx	R055-000327610-R055-00328761	Condensed, SA	0.5	0 0	1 1	0 0	1 1	
138	<i>Polansky v. Berejny</i> , 393 S.W.3d 362	307A-517.1	Under Texas Rule of Civil Procedure 162, "[a]t any time before the plaintiff has introduced all of his evidence other than rebuttal evidence, the plaintiff may dismiss a case, or take a nonsuit, which shall be entered in the minutes. The granting of a nonsuit is merely a ministerial act, and is not subject to review by the appellate courts." <i>University of Texas at Galveston v. Estate of Darla Bladmon ex rel. Shultz</i> , 195 S.W.3d 98, 100 (Tex.2006) (per curiam). A nonsuit is effective when it is filed; it "extinguishes a case or controversy from 'the moment the motion is filed' or an oral motion is made in open court." <i>Id.</i> <i>Jochim</i> , 315 S.W.3d 860, 862 (Tex.2010). Although rule 162 allows the trial court to hold hearings and enter orders affecting costs, attorneys' fees, and other matters, it does not authorize the trial court to enter an order of nonsuit's effect of rendering the merits of the case moot." <i>University of Tex. Med. Branch</i> , 195 S.W.3d at 100.	Although rule regarding nonsuits allows the trial court to hold hearings and enter orders affecting costs, attorney fees, and sanctions after a nonsuit is filed, the rule does not forestall the nonsuit's effect of rendering the merits of the case moot. <i>Vernon's Admin. Law Rules C.V.P.</i> , Rule 162.	"Although rule regarding nonsuits allows the trial court to hold hearings and enter orders affecting costs, attorney fees, and sanctions after a nonsuit is filed, does the rule forestall the nonsuit's effect of rendering the merits of the case moot?"	Pretrial Procedure - Memo # 2278 - C- SB.docx	R055-000301642-R055-00301643	SA, Sub	0.72	0 0	0 1	1 1	1 1	
139	<i>Angerme v. Nissenbaum</i> , 208 A.D.2d 579	307A-517.1	While it is true that a plaintiff should be permitted to discontinue an action without prejudice in order to rectify a tactical error, simply the form of the action or avoid juror confusion, generally leaves to the plaintiff the decision whether to discontinue an action. It is not the plaintiff to circumvent the effect of a court order in the defendant's favor, since prejudice would inure to the defendant (see, <i>Brenhouse v. Anthony Industries Inc.</i> , 156 A.D.2d 411, 548 N.Y.S.2d 533; <i>Valledares v. Valledares</i> , 80 A.D.2d 244, 438 N.Y.S.2d 810). Since the granting of the plaintiffs' cross motion essentially enabled them to circumvent the previously-issued order precluding them from offering evidence as to the nature of their claim of malpractice, it was improper for the court to grant the cross motion in this case.	While it is true that plaintiff should be permitted to discontinue action without prejudice in order to rectify tactical error, simply form of action or avoid juror confusion, leave to discontinue action without prejudice to plaintiff. Plaintiff's cross motion essentially enabled them to circumvent effect of a court order in a defendant's favor, since prejudice would inure to a defendant."	"Should leave to discontinue an action without prejudice generally not be granted to enable a plaintiff to circumvent an effect of a court order in a defendant's favor, since prejudice would inure to a defendant?"	028481.docx	LEGALCASE-00132298-LEGALCASE-00132299	Condensed, SA	0.54	0 0	1 1	0 0	1 1	

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences	
140	Coburn v. Domonasky, 257 Pa. Super. 474	307A+723.1	It is true that the attorney in Budget (as far as the reported opinion reveals) had his several cases pending well in advance of the trial date of the case at which was absent, whereas here counsel accepted the criminal case on Friday, only three days before the first day of the trial term during which this civil case was to be called. This counsel here was cutting it pretty fine. However, when a lower court believes that an attorney's scheduling conflict is so inconceivable that the attorney's client must suffer a compulsory nonsuit, the court should ensure that all relevant factors are explored on the record, and that the record supports a finding that the attorney had no reasonable explanation. Here that was not done.	Where a lower court believes that counsel's scheduling conflict is so inconceivable that the client must suffer compulsory nonsuit rather than be granted a continuance, the court should ensure that all relevant factors are explored on the record and that the record supports a finding that the attorney had no reasonable explanation.	"Where a lower court believes that counsel's scheduling conflict is so inconceivable that the client must suffer compulsory nonsuit rather than be granted a continuance, the court should ensure that all relevant factors are explored on the record and that the record supports a finding that the attorney had no reasonable explanation?"	Pretrial Procedure - Memo # 4153 - C-ES.docx	ROSS-003330449-ROSS-003330450	SA, Sub	0.55	0	0	1	21,876	9,029	
141	Blair v. Graves, 99 Ohio App. 3d 123	307A+711	As an aid in determining whether a trial court has abused its discretion in ruling on a motion for a continuance, the Ohio Supreme Court has set forth a test that balances the trial court's interest in controlling its own docket, which includes the obligation to facilitate the prompt and efficient dispatch of justice, against any potential prejudice to the moving party. State v. Unger (1981), 67 Ohio 3d 65, 67, 21 O.3d 41, 43, 423 N.E.2d 709, 1080. Under the Unger test, the objective factors that may be considered by the trial court in assessing the propriety of a motion for continuance include "the length of the delay requested; whether other continuances have been requested and received; the inconvenience to litigants, witnesses, opposing counsel and the court; whether the requested delay is for legitimate reasons or whether it is dilatory, purposeful, or contrived; whether the [moving party] contributed to the circumstance which gives rise to the request for a continuance; and other relevant factors, depending on the unique facts of each case." Id. at 67-68, 21 O.O. 3d at 43, 423 N.E.2d at 1080.	Under Supreme Court's Unger test, objective factors that may be considered by trial judge in determining a motion for a continuance include length of requested delay, whether other continuances have been requested and received, inconvenience to litigants, witnesses, opposing counsel and the court, whether requested delay is for legitimate reasons or is dilatory, purposeful or contrived, whether moving party contributed to the circumstance which gives rise to request for continuance, and other relevant factors, depending on unique facts of case.	What are the objective factors which may be considered by the trial judge in determining a motion for a continuance?	031386.docx	LEGALCASE-00137786-LEGALCASE-00137787	Condensed SA, Sub	0.51	0	1	1	1	1	1
142	Weaver v. Giffels, 317 Mich. App. 671	70E+393	In doing so, the trial court should consider, when relevant, the factors historically considered in determining where an individual resides or has his or her domicile:(1) the subjective or declared intent of the person of remaining, either permanently or for an indefinite or unlimited length of time, in the place he contends is his "domicile" or "household"; (2) the formality or informality of the relationship between the person and the members of the household;(3) whether the place where the person lives is in the same house, within the same curtilage or upon the same premises;(4) the existence of another place of lodging by the person; (5) the formal or informal relationship between the person and the members of the household;(6) whether the place where the person lives is in the same house, within the same curtilage or upon the same premises; (4) the existence of another place of lodging by the person alleging "residence" or "domicile" in the household. (M.C.L.A. § 32.265b, (citations omitted).	In determining whether a child who has reached the age of majority but who is still attending high school resides full-time with a recipient of child support based on child's intent to make recipient's home her permanent residence, providing basis for child support to continue, trial court should consider, when relevant, the factors historically considered in determining where an individual resides or has his or her domicile: (1) the subjective or declared intent of the person of remaining, either permanently or for an indefinite or unlimited length of time, in the place he contends is his "domicile" or "household"; (2) the formality or informality of the relationship between the person and the members of the household; (3) whether the place where the person lives is in the same house, within the same curtilage or upon the same premises; (4) the existence of another place of lodging by the person alleging "residence" or "domicile" in the household. M.C.L.A. § 32.265b.	What all factors should a court consider in determining where an individual resides or has his or her domicile?	014471.docx	LEGALCASE-00141069-LEGALCASE-00141070	Condensed SA, Sub	0.19	0	1	1	1	1	1
143	United States v. Barash, 365 F.2d 395	63+10	We also think the charge was in error in two respects. Although the instruction that only a threat of death or serious bodily injury would make out the offense of duress appears correct enough, cf. <i>Daquino v. United States</i> , 192 F.2d 338, 358-359 (9 Cir.), cert. denied, 343 U.S. 935, 72 S.Ct. 772, 96 L.Ed. 1343 (1953); ALI Model Penal Code - 2.09 (Proposed Official Draft, 1962), that was only part of the story since Barash had also requested instructions as to the bearing of threats of economic harm on the specific intent required for conviction. This court has recently observed that "The intent to influence, accompanying the corrupt giving or accepting of something of value, is an essential element" of the offense of bribery defined in 18 U.S.C. * 201(b). <i>United States v. Irwin</i> , 354 F.2d 192, 197 (2 Cir. 1965), cert. denied, 383 U.S. 967, 86 S.Ct. 1272, 16 L.Ed.2d 308 (1966). We think that if a government officer threatens serious economic loss unless paid for giving a citizen his due, the latter is entitled to have the government officer's threat of economic loss considered as a factor in bearing on the specific intent required for the commission of bribery. Cf. <i>United States v. Miller</i> , 340 F.2d 421, 425 (4 Cr. 1965). While it is arguable that this is also true with respect to giving gratuities under 18 U.S.C. * 201(f), or to being an accessory to the receipt prohibited by 26 U.S.C. * 7214(g), offenses which have no requirement of specific intent, see <i>United States v. Irwin</i> , supra, 354 F.2d at 197, and carry a significantly lower punishment, we incline to the view that as to these offenses economic pressure is irrelevant.	If a government officer threatens serious economic loss unless paid for giving a citizen his due, the latter is entitled to have the jury consider this, not as a complete defense like duress, but as bearing on the specific intent required for the commission of bribery."	"If a government officer threatens serious economic loss unless paid for giving a citizen his due, is the citizen entitled to have the jury consider this as bearing on the specific intent required for the commission of bribery?"	014093.docx	LEGALCASE-00142209-LEGALCASE-00142210	Condensed SA, Sub	0.82	0	1	1	1	1	
144	McRoberts v. Bridgestone Americas Holding, 365 Ill. App. 3d 1059	307A+560	In making a decision on a Rule 103(b) motion, the trial court should consider the following factors: (1) the length of time used to obtain the service of process; (2) the activities of the plaintiff; (3) the plaintiff's knowledge of the defendant's location; (4) the ease with which the defendant could be located; (5) the diligence of the plaintiff; (6) the circumstances that would affect the plaintiff's rights; and (6) actual service on the defendant. <i>Womick</i> , 137 Ill.2d at 377, 548 Ill. Dec. 719, 561 N.E.2d at 27. The plaintiff has the burden of showing reasonable diligence in the service of process and must give a reasonable explanation for any apparent lack of diligence. <i>Marks</i> , 260 Ill.App.3d at 1047, 201 Ill. Dec. 393,	In making a decision on motion to dismiss for failure to act with reasonable diligence in effecting the service of process, the trial court should consider the following factors: (1) the length of time used to obtain the service of process; (2) the activities of the plaintiff; (3) the plaintiff's knowledge of the defendant's location; (4) the ease with which the defendant's whereabouts could have been ascertained; (5) special circumstances that would affect the plaintiff's rights; and (6) actual service on the defendant. Sup Ct Rules, Rule 103(b).	"In making a decision on motion to dismiss for failure to act with reasonable diligence in effecting the service of process, should the trial court consider certain factors?"	Pretrial Procedure - Memo # 6224 - C-SI.docx	ROSS-003288244-ROSS-003288245	SA, Sub	0.25	0	0	1	1	1	1

ROW	Judicial Opinion	WKNS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
151	Hall v. Rudecki, 325 S.W.3d 570	30+3896	"Missouri rules of civil procedure demand more than mere conclusions that the pleader alleges without supporting facts." Pley v. Bryant, 203 S.W.3d 87, 824 (Mo.App. 5/2/06) (quoting Solberg v. Gaven, 274 S.W.3d 695, 699 (Mo.App. 5/2/05)). That is, "although we treat all of the factual allegations in a petition as true, and liberally grant to plaintiffs all reasonable inferences therefrom, conclusory allegations of fact and legal conclusions are not confined in legal conclusions not considered in determining whether a petition states a claim upon which relief can be granted." Hendricks v. Curters of Univ. of Missouri, 308 S.W.3d 740, 747 (Mo.App. W.D.2010) (quoting Williamsite Indus., Inc. v. Clean Water Comm'n of the State of Missouri, 34 S.W.3d 197, 200 (Mo.App. W.D.2000) (emphasis and alterations in original); cf. Breeden v. Hueber, 273 S.W.3d 1, 10 (Mo.App. W.D.2008)).	Upon review of a ruling on a motion to dismiss for failure to state a claim, rules of civil procedure demand more than mere conclusions that the pleader alleges without supporting facts; that is, although the Court of Appeals treats all of the factual allegations in a petition as true, and liberally grants to plaintiffs all reasonable inferences therefrom, conclusory allegations of fact and legal conclusions are not confined in legal conclusions not considered in determining whether a petition states a claim upon which relief can be granted.	"On motion to dismiss, are conclusory allegations of fact and legal conclusions not considered in determining whether a petition states a claim upon which relief can be granted?"	038690.docx	LEGALASE-00154061- LEGALASE-00154062	SA, Sub	0.4	839	15,344	14,873	1	9,029
152	Worth v. Seidlin, 422 U.S. 490	1700+392	One further preliminary matter requires discussion. For purposes of ruling on a motion to dismiss for want of standing, both the trial and reviewing courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party; at the same time, it is within trial court's power to allow or require plaintiff to supply, by amendment to the complaint or by affidavits, further particularized allegations of fact deemed supportive of standing.	For purposes of ruling on a motion to dismiss for want of standing, both the trial and reviewing courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party; at the same time, it is within trial court's power to allow or require plaintiff to supply, by amendment to the complaint or by affidavits, further particularized allegations of fact deemed supportive of standing.	"On a motion to dismiss for want of standing, do courts accept as true all material allegations in the complaint and affidavits and construe them in favor of the plaintiffs?"	039484.docx	LEGALASE-00155028- LEGALASE-00155029	Condemned, SA	0.42	0	1	0	1	
153	Atwater v. Town of Pinefield, 250 N.H. 509	307+4681	"Generally, in ruling upon a motion to dismiss, the trial court must accept as true all material allegations of the complaint and construe them sufficiently liberally in a basis upon which relief may be granted." Prowcher v. Buzzell Plourde Assoc., 142 N.H. 848, 852-53, 711 A.2d 251 (1998). In making this determination, the court would normally accept all facts pleaded by the plaintiff as true and view those facts in the light most favorable to the plaintiff. Id. at 853, 711 A.2d 251. However, when "the motion to dismiss does not challenge the sufficiency of the plaintiff's legal claim but, instead, raises certain defenses, the trial court determine, based on the facts, whether the plaintiff has sufficiently demonstrated his right to claim relief." Id. (quotation omitted). An assertion that a claim should be dismissed because the trial court lacks jurisdiction to hear the claim due to the plaintiff's failure to exhaust its administrative remedies is one such defense.	In ruling upon a motion to dismiss, a trial court normally accepts all facts pleaded by the plaintiff as true and view those facts in the light most favorable to the plaintiff; however, when the motion to dismiss does not challenge the sufficiency of the plaintiff's legal claim but, instead, raises certain defenses, such as that the trial court lacks jurisdiction to hear the claim due to the plaintiff's failure to exhaust its administrative remedies, the trial court must look beyond the plaintiff's unsubstantiated allegations and determine, based on the facts, whether the plaintiff has sufficiently demonstrated his right to claim relief.	"When the motion to dismiss does not challenge the sufficiency of the plaintiff's legal claim but, instead, raises certain defenses, must a court look beyond a plaintiff's unsubstantiated allegations?"	025916.docx	LEGALASE-00158156- LEGALASE-00158157	SA, Sub	0.38	0	0	1	1	
154	Fonseca v. Bow, 127 Cal. App. 4th 922	24+403	The De Conas court established a three-part test for determining whether a state statute relating to immigration is preempted by federal law. The initial inquiry is whether the state statute constitutes an attempted "regulation of immigration" that is per se preempted because of the exclusivity of federal power to regulate in the area under the United States Constitution. Die Cinas, supra, 424 U.S. at 355, 96 S.Ct. 933. If this is not the case, the statute may nevertheless be preempted under the second prong of the test, which asks whether the state statute purports to exercise state power to promulgate laws not in conflict with federal laws" with respect to the subject matter of the state statute because Congress intended to "occupy the field" to which the state statute applies. Where the statute does not attempt to regulate immigration and applies to an area in which Congress did not intend to completely oust the states of power to regulate, the state statute may still be preempted under the third prong of the test, which asks whether the state statute frustrates the accomplishment and execution of the full purposes and objectives of Congress in enacting the INA." Id. at p. 363, 96 S.Ct. 933, quoting Hines v. Davidowitz, supra, 312 U.S. 52, 67 S.Ct. 399, 85 L.Ed. 581, and Florida Lime & Avocado Growers v. Paul (1963) 373 U.S. 132, 141, 83 S.Ct. 1210, 10 L.Ed.2d 248; see also Michigan Canners & Freezers v. Agricultural Bd. (1984) 467 U.S. 461, 469, 104 S.Ct. 25 88, 81 L.Ed.2d 399.)	The initial inquiry into whether a state statute relating to immigration is preempted by federal law is whether the state statute constitutes an attempted regulation of immigration that is per se preempted because of the exclusivity of federal power to regulate in the area under the United States Constitution; if this is not the case, the statute may nevertheless be preempted under a second test, which is whether it was the clear and manifest purpose of Congress to effect a complete ouster of state power to regulate in the area under the United States Constitution, or whether with respect to the subject matter of the state statute because Congress intended to occupy the field to which the state statute applies. U.S.C.A. Const. Art. 6, d. 2.	Are state statutes relating to immigration preempted by federal law?	RSS-00329774-R055- 003297748	Condemned, SA, Sub	0.52	0	1	1	1	1	
155	D.H. by Dawson v. Clayton City Sch. Dist., 880 F.3d 1306	141E+744	To determine the constitutional reasonableness of a school official's decision to search a student, courts apply a two-pronged inquiry: first, the search must be justified at its inception, meaning that the official has reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school; and second, the search must be reasonably related in scope to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction. U.S. Const. Amend. 4. The Fourth Amendment of the United States Constitution guarantees "the right of the people to be secure in their persons ... against unreasonable searches and seizures." U.S. Const. Amend. 4. The United States Supreme Court established the bounds of a school's Fourth Amendment rights in a school setting in New Jersey v. T.L.O., 469 U.S. 325, 105 S.Ct. 733, 83 L.Ed.2d 720 (1985), a non-strip search case. In T.L.O., the Supreme Court established a two-prong inquiry for determining the constitutional reasonableness of a school official's decision to search a student.	To determine the constitutional reasonableness of a school official's decision to search a student, courts apply a two-pronged inquiry: first, the search must be justified at its inception, meaning that the official has reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school; and second, the search must be reasonably related in scope to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction. U.S. Const. Amend. 4. The Fourth Amendment of the United States Constitution guarantees "the right of the people to be secure in their persons ... against unreasonable searches and seizures." U.S. Const. Amend. 4. The United States Supreme Court established the bounds of a school's Fourth Amendment rights in a school setting in New Jersey v. T.L.O., 469 U.S. 325, 105 S.Ct. 733, 83 L.Ed.2d 720 (1985), a non-strip search case. In T.L.O., the Supreme Court established a two-prong inquiry for determining the constitutional reasonableness of a school official's decision to search a student.	When can a school official reasonably search a student?	017313.docx	LEGALASE-00184355- LEGALASE-00184357	SA, Sub	0.44	0	0	1	1	

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Between Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
156	Prison Health Servs. v. Michel, 236 Ga. App. 537 S.E.2d 736	307A4595	OGCA, § 9-11-41(d) requires that before filing a previously dismissed action, a plaintiff must first file a motion with the court in the state where the cause of action arose to "show good cause for filing a second suit." In that "payment of costs in a previous suit is jurisdictional" with respect to a subsequent suit. Little v. Walker, 250 Ga. 884, 885, 301 S.E.2d 639 (1983). Jeff Davis Hosp. Auth. v. Altman, 203 Ga.App. 168, 418 S.E.2d 763 (1992). A plaintiff, however, may avoid this requirement where he demonstrates that the costs were unknown to him after a good faith effort to ascertain them, and further shows that any subsequently discovered costs were paid within a reasonable time. See, e.g., Dugherthy v. Novelle Indus., 174 Ga.App. 89, 31, 393 S.E.2d 202 (1985).	A plaintiff may avoid renewal statute's requirement that he pay court costs in first suit before re-filing by showing that he made a good faith effort to ascertain them, and further shows that any subsequently discovered costs were paid within a reasonable time. O.C.G.A. § 9-2-61(a), 9-11-41(d).	Can a plaintiff avoid a renewal statute's requirement that he pay court costs in the first suit before re-filing by showing that he made a good faith effort to ascertain them? unknown to him after a good faith effort to ascertain them?	040865.docx	LEGALASE-00166100-LEGALASE-00166101	SA, Sub	0.58	839	15,344	14,873	21,876	9,079
157	Laguette v. State, 799 S.E.2d 736	110467.2	A trial court has acted within its sound discretion in rejecting possible alternatives and in granting a mistrial. If reasonable judges could differ about the proper disposition, even though in a strict, literal sense, the trial court has acted within its sound discretion in granting a mistrial, the use of another alternative does not without more render a mistrial order an abuse of sound discretion. Deference to the judge's sound discretion also precludes a reviewing court from assuming, in the absence of record evidence, that the trial judge deprived a defendant of constitutional rights. Spearman v. State, 278 Ga. 327, 321 (2), 602 S.E.2d 568 (2004) (citation and punctuation omitted).	A trial court has acted within its sound discretion in rejecting possible alternatives and in granting a mistrial. If reasonable judges could differ about the proper disposition, even though in a strict, literal sense, the trial court has acted within its sound discretion in granting a mistrial, the use of another alternative does not without more render a mistrial order an abuse of sound discretion.	"Does a Court act within its sound discretion in rejecting possible alternatives and in granting a mistrial, for the purposes of double jeopardy analysis, after about the proper disposition of the trial? Is it necessary to show that the trial court's decision to grant a mistrial is not necessary?"	015635.docx	LEGALASE-00166128-LEGALASE-00166129	Condensed, SA	0.43	0	1	0	1	
158	State v. Goveals, 384 P.3d 846	1135499	"A mistrial is properly declared and retrial is not barred by the defendant's right against double jeopardy where the defendant consented to the mistrial or there was manifest necessity for the mistrial." Wilmer, 97 Hawaii at 242-43, 3 P.3d at 759-60. Manifest necessity is defined as "circumstances in which it becomes no longer possible to conduct the trial or to reach a fair result based upon the evidence." Id. at 244, 35 P.3d at 763 (quoting Quigley, 85 Hawaii at 143, 938 P.2d at 574). Hawaii law states that termination of prosecution is not a bar to retrial if the defendant's consent to the mistrial or conduct, in or outside the courtroom, makes it impossible to proceed with the trial without injustice to either the defendant or the State[.] HRS, § 70-11.10(d)(1) (b) (iii).	"Manifest necessity" as would warrant a mistrial and not bar retrial based on defendant's right against double jeopardy, is defined as circumstances in which it becomes no longer possible to conduct the trial or to reach a fair result based upon the evidence. U.S. Const. Amend. 5; Haw. Rev. Stat. § 70-11.10(d)(1) (b) (iii).	"Is 'manifest necessity' as would warrant a mistrial and not bar retrial based on defendant's right against double jeopardy, defined as circumstances in which it becomes no longer possible to conduct the trial or to reach a fair result based upon the evidence. U.S. Const. Amend. 5; Haw. Rev. Stat. § 70-11.10(d)(1) (b) (iii)."	015865.docx	LEGALASE-00166258-LEGALASE-00166259	Condensed, SA	0.59	0	1	0	1	
159	Jackson v. Bank of Am., N.A., 149 A.D.3d 815	307A4679	A motion pursuant to CPLR 3211(a)(1) to dismiss a complaint or petition on the ground that a defense is founded on documentary evidence may be appropriately granted where the documentary evidence utterly negates the allegations of the petition. See, e.g., Matter of [redacted] v. [redacted], 149 A.D.3d 314, 326; 74 N.E.2d 688, 779 N.E.2d 1190; Leon v. Martinez, 84 N.Y.2d 83, 88, 638 N.E.2d 511; Matter of White Plains Plaza Realty, LLC v. Cappelli Enters., Inc., 108 A.D.3d 634, 636, 970 N.Y.S.2d 47. On a motion to dismiss a pleading pursuant to CPLR 3211(h)(7) for failure to state a cause of action, the court must afford the pleading a liberal construction, accept all facts as alleged in the pleading to be true, accord the plaintiff or petitioner the benefit of every possible inference, and construe the facts and pleadings in the light most favorable to the plaintiff or petitioner. See, e.g., Matter of [redacted] v. [redacted], 149 A.D.3d 314, 326; 74 N.E.2d 688, 779 N.E.2d 1190; Leon v. Martinez, 84 N.Y.2d 83, 88, 638 N.E.2d 511; Breyer v. Breyer, 108 A.D.3d 703, 703-704, 84 N.Y.S.2d 70.	On a motion to dismiss a pleading for failure to state a cause of action, the court must afford the pleading a liberal construction, accept all facts as alleged in the pleading to be true, accord the plaintiff or petitioner the benefit of every possible inference, and construe the facts and pleadings in the light most favorable to the plaintiff or petitioner. See, e.g., Matter of [redacted] v. [redacted], 149 A.D.3d 314, 326; 74 N.E.2d 688, 779 N.E.2d 1190; Leon v. Martinez, 84 N.Y.2d 83, 88, 638 N.E.2d 511; Matter of White Plains Plaza Realty, LLC v. Cappelli Enters., Inc., 108 A.D.3d 634, 636, 970 N.Y.S.2d 47. On a motion to dismiss a pleading pursuant to CPLR 3211(h)(7) for failure to state a cause of action, the court must afford the pleading a liberal construction, accept all facts as alleged in the pleading to be true, accord the plaintiff or petitioner the benefit of every possible inference, and construe the facts and pleadings in the light most favorable to the plaintiff or petitioner. See, e.g., Matter of [redacted] v. [redacted], 149 A.D.3d 314, 326; 74 N.E.2d 688, 779 N.E.2d 1190; Leon v. Martinez, 84 N.Y.2d 83, 88, 638 N.E.2d 511; Breyer v. Breyer, 108 A.D.3d 703, 703-704, 84 N.Y.S.2d 70.	"While a plaintiff's pleadings are liberally interpreted in the context of motion to dismiss for failure in a CPLR 3211(a)(7) motion to state a cause of action, will such liberal standard not save allegations that consist of bare legal conclusions?"	030670.docx	LEGALASE-00150468-LEGALASE-00150469	Condensed, SA	0.65	0	1	0	1	
160	Murray v. Cadle Co., 257 S.W.3d 291	366-1	"Equitable subrogation" is a legal fiction whereby "an obligation, extinguished by a payment made by a third person, is treated as still existing for the benefit of the person who made the payment, so that the creditor is substituted to the rights, remedies, and securities of another." First Nat'l Bank of Houston v. Askegan, 70 Tex. 315, 319-20, 8 S.W. 45, 47 (1888). It essentially allows a subsequent lienholder to take the lien-priority status of a prior lienholder. Id. at 319-20, 8 S.W. at 46-47; Farm Credit Bank of Tex. v. Ogden, 886 S.W.2d 305, 310 (Tex.App.-Houston [1st Dist.] 1994, no writ). The general purpose of equitable subrogation is to prevent unjust enrichment of the debtor. First Nat'l Bank v. O'Dell, 856 S.W.2d 415, 423 (Tex. 1993). It does not extend to cases where the creditor, in not in which the creditor is not acting voluntarily, has paid a debt for which another was primarily liable and which in equity should have been paid by the latter." Mid-Continent Ins. Co. v. Liberty Mut. Ins. Co., 236 S.W.3d 765, 774 (Tex. 2007). Texas courts are particularly hospitable to the doctrine. Interfirst Bank Dallas, N.A. v. U.S. Fed. & Guar. Co., 774 S.W.2d 391, 397 (Tex.App.-Dallas 1989, writ denied); LaSalle Bank Nat'l Ass'n v. White, 217 S.W.3d 573, 580 (Tex.App.-San Antonio 2006), rev'd in part on other grounds, 248 S.W.3d 616 (Tex. 2007) (per curiam). The doctrine of equitable subrogation is not applied broadly enough to include every instance in which one person, not acting voluntarily, has paid a debt for which another was primarily liable and which in equity and good conscience should have been discharged by the latter." Torrey v. Jorrie, 511 S.W.2d 379, 386 (Tex. Civ. App.-San Antonio 1974, writ ref'd n.r.e.); see also, e.g., Diversified Mortgage Investors v. Lloyd D. Baylock Gen. Contractor, Inc., 576 S.W.2d 794, 807 (Tex. 1978) (op. on en giff).	"Equitable subrogation" is a legal fiction whereby an obligation, extinguished by a payment made by a third person, is treated as still existing for the benefit of the person who made the payment, so that the creditor is substituted to the rights, remedies, and securities of another.	"Is equitable subrogation a legal fiction whereby an obligation, extinguished by a payment made by a third person, is treated as still existing for the benefit of the person who made the payment, so that the means of one creditor is substituted to the rights, remedies, and securities of another?"	Subrogation - Memo 291 - RM Cobox	ROSS-00302789-ROSS-00302790	Condensed, SA	0.85	0	1	0	1	

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ROW	Judicial Opinion	WKNS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
	Zivotofsky ex rel. Zivotofsky v. Sec'y of State, 725 F.3d 197	22.15-02	Recognition is the act by which "a state commits itself to treat an entity as a state or to treat a regime as the government of a state." Restatement (Second) of Foreign Relations Law § 94(1). "The rights and attributes of sovereignty belong to [a state] independently of all recognition, but it is only after it has been recognized that it is assured of exercising them." 1 John Bassett Moore, A Digest of International Law 727, at 721 (1906) (Moore's Int'l Law Digest). Recognition is therefore a critical step in establishing diplomatic relations with the United States, if the United States chooses to do so. The United States has a long history of following [] to acknowledge that the government in question speaks as the sovereign authority for the territory it purports to control." Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 410, 84 S.Ct. 923, 11 L.Ed.2d 804 (1964). Recognition also confers other substantial benefits. For example, a recognized sovereign generally may (1) maintain a suit in a United States court, see id. at 410-09, 84 S.Ct. 923; Guaranty Trust Co. v. United States, 304 U.S. 126, 38 S.Ct. 785, 82 L. Ed. 1224 (1938) (2) assert the sovereign immunity defense in a United States court, see Nat'l Int'l Trade Union v. Fed. Reserve Bd., 409 U.S. 112, 33 L. Ed. 389 (1955); and (3) benefit from the "act of state" doctrine, which provides that "every sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory." Ojeda v. Cent. Leather Co., 246 U.S. 297, 303, 38 S.Ct. 395, 62 L. Ed. 726 (1935) (quotation marks omitted).	An entity recognized by the United States as a foreign state may maintain a suit in a United States court, assert the sovereign immunity defense in a United States court, and benefit from the "act of state doctrine," which provides that every sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory.	"% every sovereign state bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another, done within its own territory?"	International Law - Memo # 120 - CAR.docx	ROSS-00324865-ROSS-003324866	Condensed_SA	0.73	839	1	14,873	21,276	9,029
166														
	Washington Legal Found. v. Legal Found. of Washington, 271 F.3d 835	14.62-4	That the banking industry is the regulatory backdrop for our decision also counsels against the application of the per se analysis to the regulations of the use of money in issue. Such analysis has almost exclusively been employed in situations involving real property. In creating its IDITA program, Washington has not encroached upon a domain devoted of governmental regulation. As the Phillips majority recognized, it is the Federal Government's own regulations that make the state IDITA program a tax. The state IDITA program is a tax on the interest that banks report on their funds generated, see Rev. Rul. 81-209, 1981-2 Cum. Bull. 16 [and] prohibits for-profit corporations from holding funds in NOW accounts if the interest is paid to the corporation, but permits corporate funds to be held in NOW accounts if the interest is paid to the IDITA fund; see Federal Reserve's IDITA letter." Phillips, 524 U.S. at 170771, 118 S.Ct. 1925. We agree with the reasoning of the Federal Circuit because "the state's traditionally high degree of control of interest rates and the state's long history of regulating banks suggest that apply to real property do not apply in the same manner to bank accounts." Phillips, 524 U.S. at 170771, 118 S.Ct. 1925. The state's interest in imposing taxes on banks and imposing monetary liability. Thus, even though taxes or special municipal assessments indisputably "take" money from individuals or businesses, assessments of that kind are not treated as per se takings under the Fifth Amendment.	Because of the state's traditionally high degree of control of commercial dealings, the principles of takings law that apply to real property do not apply in the same manner to statutes imposing monetary liability; thus, even though taxes or special municipal assessments indisputably take money from individuals or businesses, assessments of that kind are not treated as per se takings under the Fifth Amendment. U.S. Const. Amend. 5.	"Does the principles of takings law that apply to real property, apply in the same manner to statutes imposing monetary liability?"	017629.docx	LEGALASE-00126624-LEGALASE-00126625	Condensed_SA, Sub	0.71	0	1	1	1	1
167														
	Guarnillo v. Cumella, 141 Conn. App. 227	30.7A-211	We first apply our standard of review. "A trial court holds broad discretion in granting or denying a motion for a continuance. Appellate review of a trial court's denial of a motion for a continuance is governed by an abuse of discretion standard that...affords the trial court broad discretion in matters of continuances....An abuse of discretion must be proven by the appellant by showing that the denial of the continuance was unreasonable or arbitrary." (Internal quotation marks omitted.) Cote v. Machabea, 87 Conn.App. 627, 633, 866 A.2d 659 (2005). "There are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process. The standard is to be found in the facts and circumstances of each case, viewed in the light of the law applicable to the trial judge at the time the request is denied.... There are several factors that the trial court may consider in exercising its discretion. The factors include the timeliness of the request for continuance; the likely length of the delay; the age and complexity of the case; the granting of other continuances in the past; the impact of delay on the litigants, witnesses, opposing counsel and the court; the perceived legitimacy of the reasons proffered in support of the request; the defendant's personal responsibility for the delay; the timing of the request; and (8) the likelihood that the denial would substantially impair the defendant's ability to defend himself.... [A]n appellate court should limit its assessment of the reasonableness of the trial court's exercise of its discretion to a consideration of those factors, on the record, that were presented to the trial court, or of which that court was aware, at the time of its ruling on the motion for a continuance." (Internal quotation marks omitted.) State v. Jennings, 125 Conn.App. 801, 820, 9 A.3d 446 (2011). "In the event that the trial court acted unreasonably in denying a continuance, the	There are several factors that the trial court may consider in exercising its discretion in deciding whether to grant a continuance: (1) timeliness of the request for continuance; (2) the likely length of the delay; (3) the age and complexity of the case; (4) the granting of other continuances in the past; (5) the impact of delay on the litigants, witnesses, opposing counsel and the court; (6) the perceived legitimacy of the reasons proffered in support of the request; (7) the defendant's personal responsibility for the delay; and (8) the likelihood that the denial would substantially impair the defendant's ability to defend himself.	What law factors does a court consider when determining whether to grant a continuance?	036700.docx	LEGALASE-00130021-LEGALASE-00130023	SA, Sub	0.71	0	1	1	1	
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ROW	Judicial Opinion	WKS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
169	In re Dissolution of Marriage of Leverock & Hamby, 23 So. 3d 424	307A-483	We find that it was unnecessary for the petitioners to petition the chancellor to deem the requests for admission admitted. Consequently, the chancellor was in error for denying the request as being untimely filed. According to Mississippi Rule of Civil Procedure 36(a), "a matter is admitted unless, within thirty days after service of the request . . . the party denies the request or files a written answer or objection to the matter. . . . If the party does not have the matter admitted, the matter is deemed admitted." This rule gives the admission a written answer or objection addressed to the matter, signed by the party or by his attorney." Thus, a judge does not have the discretion to deem the matter admitted, because a request is conclusively established upon a party's failure to answer within thirty days, or such time as the judge has determined appropriate. Miss. R. Civ. P. 36(b). The trial court may, however, permit withdrawal or amendment of the admission. Rule 36(c). The court may, however, deny the request to be admitted under Rule 36(c) if the party has been diligent in its application, the hardship may be ameliorated by the trial court's power to grant amendments or withdrawals of admissions in proper circumstances." DeBlanc v. Stancil, 814 So.2d 796, 801-02 (Miss.2002). The rule was intended to be used as a means to determine which facts are not in dispute, not as a way to avoid adjudication of contested issues, i.e.,	A judge does not have the discretion to deem a matter admitted, because a request for admissions is conclusively established upon a party's failure to answer within thirty days, or such time as the judge has determined appropriate; the trial court may, however, permit withdrawal or amendment of the admission. Rules Civ.Proc., Rule 36.	"Does a judge have the discretion to deem a matter admitted, because a request for admissions is conclusively established upon a party's failure to answer within thirty days, or such time as the judge has determined appropriate?"	032909.docx	LEGALCASE-00134046-LEGALCASE-00134047	15,344	1	0	839	1	21,876	9,029
170	Zlotolsky ex rel. Zlotolsky v. Sec'y of State, 725 F.3d 197	2215-02	Recognition is the act by which "a state commits itself to treat an entity as a state or to treat a regime as the government of a state." "Restatement (Second) of Foreign Relations Law" § 94(1). "The rights and attributes of sovereignty belong to [a state] independently of all recognition, but it is only after it has been recognized that it is assured of exercising them." 1 John Bassett Moore, A Digest of International Law 27, 27-71 (1906) (quoting Moore, A Digest of International Law 27, 27-71 (1906)). "The United States does not recognize a state, it means the United States is 'unwilling' to acknowledge that the government in question speaks as the sovereign authority for the territory it purports to control." Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 410, 84 S.Ct. 923, 11 L.Ed.2d 804 (1964). Recognition also confers other substantial benefits. For example, recognition may allow a country to sue in U.S. courts. United States Int'l Trade & Commerce Bd. v. United States, 304 U.S. 137, 137, 58 S.Ct. 785, 82 L.Ed. 3224 (1938); (2) assert this sovereign immunity defense in a United States court, see Nat'l City Bank v. Republic of China, 348 U.S. 356, 359, 75 S.Ct. 423, 99 L.Ed. 389 (1955); and (3) benefit from the "act of state" doctrine, which provides that "[f]oreign sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory." Quinlan v. Cent. Leather Co., 246 U.S. 397, 393, 38 S.Ct. 309, 42 L.Ed. 726 (1938) (quotation marks omitted).	An entity recognized by the United States as a foreign state may maintain a suit in a United States court, assert the sovereign immunity defense in a United States court, and benefit from the "act of state doctrine," which provides that every sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory.	"If a sovereign state bound to respect the independence of every other sovereign, and will the courts of one country sit in judgment on the acts of the government of another done within its own territory?"	International Law - Memo RUD08 ANC.docx	ROSS-00023260633-ROSS-00023260636	0	1	0	1	0	1	0
171	Williams v. Bordon, 274 S.C. 275	307A-716	This case is a civil action for damages. We think, as a general rule, a plaintiff who seeks damages for tortious conduct must prove that the duties should be granted, when the plaintiff has shown a good faith belief in a substantial right of the parties to the litigation will be defeated or abridged by the delay.	Generally, request for a continuance due to counsel's negligence is granted if the plaintiff can show that the request is timely and made in good faith, unless a substantial right of the party to the litigation will be defeated or abridged by the delay.	"Generally, should a request for a continuance due to counsel's negligence be granted if the plaintiff can show that the request is timely and made in good faith, unless a substantial right of the parties to the litigation will be defeated or abridged by the delay?"	Pretial Procedure - Memo F 32603 - C - S5.docx	LEGALCASE-00025173-LEGALCASE-00025174	0	1	0	1	1	1	1
172	Brooks v. Ann. Board Co., 179 Cal. App. 3d 500	307A-485	A party responding to requests for admissions has a duty to make a reasonable investigation to ascertain the facts even though the party has no personal knowledge of the matter when the party has available sources of information as to the matters involved in such requests for admissions. The duty to make a reasonable investigation is not waived by 47 Cal. Rptr. 288, Filing Chidsey v. Superior Court (1966) 215 Cal.App.2d 318, 323, 30 Cal.App. 303 (1967). Thus, if a party denies a request for admission (of substantial importance) in circumstances where the party lacked personal knowledge but had available sources of information and failed to make a reasonable investigation to ascertain the facts, such failure will justify an award of expenses under section 2034(c).	If a party denies request for admission of substantial importance under circumstances where party lacked personal knowledge but had available sources of information and failed to make reasonable investigation to ascertain facts, such failure justifies award of expenses under § 2034(c) if the party can show that the request is timely and made in good faith, unless a substantial right of the party to the admission. West's Ann. Cal. C.C.P. § 2034(c).	"If a party denies a request for admission in circumstances where party lacked personal knowledge but had available sources of information and failed to make reasonable investigation to ascertain the facts, will such failure justify an award of expenses?"	Pretial Procedure - Memo F 3484 - C - N6.docx	ROSS-000317456F-ROSS-000317457	0	0	0	1	1	1	1
173	Soto v. BorgWarner Motor TEC Inc., 239 Cal. App. 4th 165, 191 Cal. Rptr. 3d 263	307A-36.1	There are two alternative discovery methods available to a plaintiff that is declined or unable to avail itself of the procedures set forth in Civil Code section 3295, subdivision (c). First, the plaintiff may request that the defendant "aspicate to a process by which [the defendant] would gather documents pertaining to [its] financial condition, bring them to trial under seal and make them immediately available" in the event that the plaintiff is unable to obtain the documents through the usual discovery process. This method is frequently used and effective means of handling the matter when a claim for punitive damages is alleged", and may be suggested or facilitated by the court. (Ibid.) Finally, a plaintiff may do nothing pretrial and instead wait until liability is established to ask the court for the order described in Civil Code section 3295, subdivision (c). (Mile. Davidson Co., supra, 78 Cal.App.4th at p. 606; 92 Cal.Rptr.2d 897.) This strategy may backfire, however, as it is left to the court's discretion whether to delay the trial until the plaintiff has established liability. The court may, however, such an order is inappropriate under the circumstances of the case.(CA Enterprises, Inc. v. Palram Americas, Inc. (2015) 235 Cal.App.4th 257, 284, 185 Cal.Rptr. 3d 24 (1"Ca)).	A plaintiff seeking punitive damages may do nothing pretrial and instead wait until liability is established to ask the court for the order permitting discovery of the defendant's financial condition, but this strategy may backfire, as it is left to the court's discretion whether to delay the proceedings by ordering the defendant to produce information that could have been obtained earlier or to forego ahead upon concluding that such an order is inappropriate under the circumstances of the case. Cal. Civ. Code § 3295(c).	Is pretrial discovery of a defendant's financial condition in connection with a claim for punitive damages prohibited if a court order permitting such discovery is absent?	031037.docx	LEGALCASE-00137993-LEGALCASE-00137994	0	0	0	1	1	1	1

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences	
	Short v. Frink, 151 Cal. 83	307A-74	Where a general objection to a question in a deposition is susceptible of an answer that may be properly given in evidence has been overruled, the object's only remedy, after the answer is read, is a motion to strike out, and, in the absence of such motion, the question will not be considered on appeal, since, in the absence of actual knowledge, specific objection, or intimation to the contrary, a trial court has the right to assume that a question in a deposition is susceptible of an answer properly admissible in evidence has been so answered if objection to a question susceptible of a proper answer contained in the deposition is based on the nature of the answer given and recorded, it is the duty of the objector to so frame his objection as to specifically bring the matter to the attention of the court. The court is no more called upon to heed a mere general objection of incompetency, irrelevancy, and immateriality, where the testimony is being read from the deposition, than it is where the witness is testifying viva voce, as to which the wellsettled rule has already been stated. In the absence of actual knowledge, specific objection, or intimation to the contrary, the trial court has the right to assume that a question in a deposition is susceptible of an answer that may properly be given in evidence has been so answered, and the objector's utmost remedy, in the event that the answer is read, is, as stated in People v. Lawrence, supra, a motion to strike out objectionable evidence given in response to the question. Defendant should have moved to strike out this evidence, if he had desired to subsequently urge error in regard thereto, and, in the absence of such motion, we would not consider the matter on appeal.	Where a general objection to a question in a deposition is susceptible of an answer that may be properly given in evidence has been overruled, the object's only remedy, after the answer is read, is a motion to strike out, and, in the absence of such motion, the question will not be considered on appeal, since, in the absence of actual knowledge, specific objection, or intimation to the contrary, a trial court has the right to assume that a question in a deposition is susceptible of an answer properly admissible in evidence has been so answered if objection to a question susceptible of a proper answer contained in the deposition is based on the nature of the answer given and recorded, it is the duty of the objector to so frame his objection as to specifically bring the matter to the attention of the court. The court is no more called upon to heed a mere general objection of incompetency, irrelevancy, and immateriality, where the testimony is being read from the deposition, than it is where the witness is testifying viva voce, as to which the wellsettled rule has already been stated. In the absence of actual knowledge, specific objection, or intimation to the contrary, the trial court has the right to assume that a question in a deposition is susceptible of an answer that may properly be given in evidence has been so answered, and the objector's utmost remedy, in the event that the answer is read, is, as stated in People v. Lawrence, supra, a motion to strike out objectionable evidence given in response to the question. Defendant should have moved to strike out this evidence, if he had desired to subsequently urge error in regard thereto, and, in the absence of such motion, we would not consider the matter on appeal.	"Where a general objection to a question in a deposition is susceptible of an answer that may be properly given in evidence has been overruled, the object's only remedy, after the answer is read, is a motion to strike out, and, in the absence of such motion, the question will not be considered on appeal, since, in the absence of actual knowledge, specific objection, or intimation to the contrary, a trial court has the right to assume that a question in a deposition is susceptible of an answer properly admissible in evidence has been so answered."	032453.docx	LEGALSE-00140492-LEGALSE-00140493	Condensed, SA, Sub	0.69	839	1	14,873	21,876	9,029	
274	Indianapolis-Marion Ctr. Pub. Library v. Shock, 835 N.E.2d 533	307A-554	In resolving this issue, we first note that the party challenging a trial court's subject matter jurisdiction bears the burden of proving that jurisdiction does not exist. Methodist Hosp. of Ind., Inc. v. Ray, 551 N.E.2d 463, 467 (Ind.Ct.App.1990), adopted in 558 N.E.2d 829 (Ind.1990). Subject matter jurisdiction is the power to hear and determine cases of a general class to which the proceedings then before the Court belong. Miller v. County of Elkhart, 344 N.E.2d 349, 351 (Ind.1969). When reviewing a Trial Rule 12(B)(1) motion to dismiss for lack of subject matter jurisdiction, the relevant question is whether the type of claim presented falls within the general scope of the authority conferred upon the court by constitution or statute. Cmty. Hosp. v. Awant, 790 N.E.2d 585, 586 (Ind.Ct.App.2003). The trial court may consider facts outside the pleadings when ruling on a Rule 12(B)(1) motion. Perry v. Stitzer Buick GMC, Inc., 637 N.E.2d 1382, 1386 (Ind.1994).	When reviewing a motion to dismiss for lack of subject matter jurisdiction, the relevant question is whether the type of claim presented falls within the general scope of the authority conferred upon the court by constitution or statute. Trial Procedure Rule 12(B)(1).	"In reviewing a motion to dismiss for lack of subject matter jurisdiction, is the question whether the type of claim presented falls within the general scope of the authority conferred upon the court by constitution or statute?"	033400.docx	LEGALSE-00142716-LEGALSE-00142717	Order, SA	0.72	1	0	0	1	1	1
275	Sykes v. Mobil Oil Corp., 952 P.2d 1164	307A-524	Ordinarily, the choice of a particular sanction for a discovery violation is a matter committed to the broad discretion of the trial court. Subject only to review for abuse of discretion. Hughes v. Bobch, 875 P.2d 749, 752 (Alaska 1994). However, we have repeatedly held that the trial court's discretion is limited when the effect of the sanction it selects is to impose liability on the offending party, establish the outcome of or preclude evidence on a central issue, or end the litigation entirely. Before extreme sanctions of this kind may properly be imposed, [there must be] "willful or negligent" violations of the Rules. The record must also "clearly indicate a reasonable exploration of possible and meaningful alternatives to dismissal." ... If meaningful alternative sanctions are available, the trial court must ordinarily impose these lesser sanctions....Arborsky, 922 P.2d at 227 (citation and footnotes omitted).	Choice of particular sanction for discovery violation is ordinarily matter committed to broad discretion of the trial court, subject only to review for abuse of discretion, but trial court's discretion is limited when effect of sanction is to impose liability on offending party, establish outcome of or preclude evidence on central issue or end litigation entirely. Rules Civ.Proc., Rule 37.	"Is the choice of particular sanction for discovery violation ordinarily matter committed to broad discretion of the trial court, subject only to review for abuse of discretion?"	034222.docx	LEGALSE-00144735-LEGALSE-00144736	SA, Sub	0.6	0	0	1	1	1	1
276	Renov v. Hawerty Furniture Companies, 993 So. 2d 1014	307A-563	To determine whether particular conduct was sufficient to justify dismissal for fraud on the court, in Jacob v. Henderson, 840 So.2d 1167, 1169 (Fla. 2d DCA 2003), we followed Cox v. Burke, 705 So.2d 43, 46 (Fla. 5th DCA 1998), in utilizing the test set forth in Aoudé v. Mobil Oil Corp., 892 F.2d 1115, 1118 (1st Cir. 1989). A "fraud on the court" occurs where it can be demonstrated, clearly and convincingly, that a party has deliberately set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier or unfairly hampering the presentation of the opposing party's claim or defense.	A "fraud on the court," upon which dismissal of action can be based, occurs where it can be demonstrated, clearly and convincingly, that a party has deliberately set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier or unfairly hampering the presentation of the opposing party's claim or defense.	"Does a "fraud on the court" occur where it can be demonstrated that a party has deliberately set in motion some unconscionable scheme calculated to interfere with the judicial system's ability?"	034331.docx	LEGALSE-00145423-LEGALSE-00145425	SA, Sub	0.4	0	0	1	1	1	1
277	Lentz v. Phil's Toy Store, 228 N.C. App. 416	307A-650	Before a civil case may be involuntarily dismissed with prejudice for failure to prosecute pursuant to N.C. Gen.Stat. "1A-1, Rule 41(b) (2003), the trial court must address the following three factors in its order:(1) whether plaintiff acted in a manner which deliberately or unreasonably delayed the matter; (2) amount of prejudice, if any, to defendant caused by plaintiff's failure to prosecute; and (3) whether one of the factors is so weighty that it alone would justify dismissal. Rule 41(b), West's N.C.G.S.A. § 1A-1.	Before civil case may be involuntarily dismissed with prejudice for failure to prosecute, trial court must address the following three factors in its order: (1) whether plaintiff acted in manner which deliberately or unreasonably delayed the matter; (2) amount of prejudice, if any, to defendant caused by plaintiff's failure to prosecute; and (3) whether one of the factors is so weighty that it alone would justify dismissal. Rule 41(b), West's N.C.G.S.A. § 1A-1.	What factors should the court address before a case may be involuntarily dismissed with prejudice for failure to prosecute?	Pretrial Procedure - Memo # 8019 - C-003280012	R055-00328001-R055-00328002	Condensed, SA, Sub	0.34	0	1	1	1	1	1
278															

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ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
190	Hirt Corp., 383 B.R. 84	36e-1	As applied in Tennessee, "subrogation is an equitable doctrine that facilitates the adjustment of rights to avoid unjust enrichment in many types of situations by substituting one person or entity in place of another in regard to some claim or right that a second person or entity may have against third party." Waller v. Ammon, No. 2017-00001, 2017 WL 321699 at *1 (Tenn. Ct.App. June 19, 1998). A right of subrogation may arise by contract ("conventional subrogation"), by application of equitable principles of law ("legal subrogation"), or by application of a statute ("statutory subrogation"). It is based on two fundamental premises: 1) that an insured should not be permitted recovery twice for the same loss, which would be the potential result if the insured recovers from both its insurer and a tortfeasor; and 2) that the tortfeasor should compensate the insurer for payments the insurer made to the insured.	Under Tennessee law, "subrogation" is equitable doctrine that facilitates adjustment of rights to avoid unjust enrichment in various situations, by substituting one person or entity in place of another in regard to some claim or right that a second person or entity may have against third party?	"% subrogation an equitable doctrine that facilitates adjustment of rights to avoid unjust enrichment in various situations, by substituting one person or entity in place of another in regard to some claim or right that a second person or entity may have against third party?"	Subrogation - Memo # 540 - C - NO.docx	ROSS-003285847-RO25-003285848	SA, Sub	0.69	839	15,344	14,873	21,876	9,029
191	Dean v. Tucker, 183 Mich. App. 27	307A+746	While it is within the trial court's authority to bar an expert witness or dismiss an action as a sanction for the failure to timely file a witness list, the fact that such action is discretionary rather than mandatory necessitates consideration of circumstances of each case to determine if such drastic sanction is appropriate.	While trial court has authority to bar expert witnesses or dismiss action as sanction for failure to timely file witness list, fact that such action is discretionary rather than mandatory necessitates consideration of circumstances of each case to determine if such drastic sanction is appropriate.	"While a trial court has authority to bar expert witness or dismiss action as sanction for failure to timely file a witness list, is the fact that such action is discretionary rather than mandatory necessitate consideration of circumstances of each case?"	1081B.docx	LEGALEASE-00094203-LEGALEASE-00094204	Condensed, SA	0.74	0	1	0	1	
192	Calvert Fire Ins. Co. v. James, 236 S.C. 431	36e-1	Legal subrogation is not dependent upon contract. The doctrine is an equitable one, founded not upon any fixed law, but upon principles of natural justice. Its purpose is to require the ultimate discharge of a debt by the person who in equity and good conscience ought to pay it, and it is subject to the principle that no party shall be allowed to recover more in the light of the actions and relationships of the parties. 50 Am.Jur., Subrogation, Sections 5, 6; Gadsden v. Brown & Wellman, Speers' Eq. § 37, 17 S.C.Eq. 17; Livingston v. Columbian Banking & Trust Co., 77 S.C. 305, 57 S.E. 182, 22 L.R.A.J.S., 442, 122 Am.St.Rep. 588; American Surety Co. v. Hemrick Mills, 191 S.C. 362, 45 E.2d 308, 124 A.L.R. 1147; Powers v. Calvert Fire Ins. Co., 216 S.C. 309, 57 S.E.2d 688, 16 ALR2d 1261-SI.	Legal "subrogation" is not dependent upon contract; the doctrine is an equitable one, founded not upon any fixed law, but upon principles of natural justice. Its purpose is to require the ultimate discharge of a debt by the person who in equity and good conscience ought to pay it, and it is subject to the principle that no party shall be allowed to recover more in the light of the actions and relationships of the parties.	"% the doctrine of equitable subrogation to be applied according to dictates of equity and good conscience, in light of actions and relationship of parties?"	Subrogation - Memo # 403 - C - SA.docx	ROSS-00328474-RO25-003284275	Condensed, SA	0.51	0	1	0	1	
193	Isaempeo v. Haskro, 92 F. Supp. 562	413+1	Pursuant to Murray v. The Court, conclusions that the Rhode Island Workers' Compensation Act provides the sole avenue of redress for employees who have suffered intentional infliction of emotional distress as a result of workplace sexual harassment and other discrimination. The scope and breadth of the WCA is not to be underestimated; the Act establishes a statutory scheme whereby an employee will be provided with swift, though limited relief for all injuries suffered on job; however right to no-fault compensation is afforded in lieu of all other rights and remedies that injured employee might have.	Rhode Island Workers' Compensation Act establishes statutory scheme whereby employee is provided with swift, though limited, relief for all injuries suffered on job; however right to no-fault compensation is afforded in lieu of all other rights and remedies that injured employee might have. R.I.Gen.Laws 1956, §§ 28-29-1 to 28-37-31.	"Does the workers' compensation act (WCA) establish a statutory scheme whereby an employee is provided with a swift, though limited relief for all injuries suffered on the job, even though the right to no-fault compensation is afforded in lieu of all other rights and remedies that injured employee might have?"	Workers Compensation - Memo #58 ANC.docx	ROSS-003286307-RO25-003286908	Condensed, SA	0.76	0	1	0	1	
194	Health Republic Ins. Co. v. United States, 129 Fed.Cl. 115	27+1	The RCFC, which largely mirror the Federal Rules of Civil Procedure, do not provide for the participation of amici curiae. Nevertheless, the court possesses the inherent authority to allow such participation, and has broad discretion to exercise that authority. Am. Satellite Co. v. United States, 22 Cl.Ct. 547, 549 (1991). When deciding whether to allow the participation of an amicus curiae, the court may consider a number of factors, including (1) whether the court is persuaded that participation by the proposed amicus will assist the court in resolving the issues presented by the assertions of one party"; (2) [3] Whether the parties consent to the participation of the amicus curiae; (d.) (3) whether "one of the parties is not interested in or capable of fully presenting one side of the argument"; (4) whether "the court's decision would directly affect [the movant's] interest"; (5) whether participation by an amicus curiae would "unduly delay or prejudice the adjudication of the merits"; and (6) whether the proposed amicus possesses "specialized knowledge" that could be "beneficial to the court in the resolution of [the] case".	When deciding whether to allow the participation of an amicus curiae, the Court of Federal Claims may consider a number of factors, including (1) whether the court is persuaded that participation by the amicus will be useful to it, as contrasted with simply strengthening the assertions of one party; (2) whether the parties consent to the participation of the amicus curiae; (3) whether one of the parties is not interested in or capable of fully presenting one side of the argument; (4) whether the court's decision would directly affect the interests of one of the parties; (5) whether controlling precedent regarding a claim of the movant; and (5) whether participation by an amicus curiae would unnecessarily delay the litigation.	What are the important factors in courts determining whether to accept an amicus brief?	Amicus Curiae - Memo # 15.docx	ROSS-003295344-RO25-003295345	SA, Sub	0.49	0	0	1	1	

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195	Velaquez v. Soriano, 43 So. 3d 82	36-61	We review an order granting summary judgment de novo. See Velez County v. Aberdeen at Ormond Beach, LP, 760 So.2d 126, 130 (Fla.2000). Equitable subrogation is one person in the place of another with reference to a lawful claim or right. Subrogation arises by operation of law where one having a liability or a right or a fiduciary relation in the law, where one having a liability or a right or a fiduciary relation in the equity, entitled to the security or obligation held by the creditor whom he has paid. Bailey v. Daniel, 72 Fla. 121, 73 So. 644, 645 (1916).	Equitable subrogation arises by operation of law, where one having a liability or a right or a fiduciary relation in the premises pays a debt due by another under such circumstances that he is, in equity, entitled to the security or obligation held by the creditor whom he has paid.	"Does legal or equitable subrogation arise by operation of law when one having a liability or a right or a fiduciary relation in the premises pays a debt due by another under such circumstances that he is, in equity, entitled to the security or obligation held by the creditor whom he has paid?"	Subrogation - Memo #351 - MS C.docx	R055-003308568-R055-003308571	Condensed, SA	0.76	839	15,344	14,873	21,876	9,029
										0	1	0	1	
196	Washington Mut. Bank, FA v. Aultman, 172 Ohio App. 3d 584	36-61	In some circumstances, the doctrine of equitable subrogation can overcome the general statutory rule. See, e.g., InleyMac Bank, FSB v. Bridges, 169 Ohio App.3d 389, 2006 OHIO 5742, 863 N.E.2d 186. "Equitable subrogation" arises by operation of law when one having a liability or right or fiduciary relationship in the law, where one having a liability or right or fiduciary relationship in the equity, entitled to the security or obligation held by the creditor whom he has paid." State v. Jones (1980), 61 Ohio St.2d 99, 102, 15 O.O.3d 132, 393 N.E.2d 1215, quoting Fed. Union Life Ins. Co. v. Deutsch (1984), 127 Ohio St. 505, 510, 189N.E. 440. In order to be entitled to equitable subrogation, "[the] equity must be strong and [the] case clear." Torco, 61 Ohio St.2d at 102, 15 O.O.3d at 132, 393 N.E.2d 1215.	Equitable subrogation arises by operation of law when one having a liability or right or a fiduciary relation in the premises pays a debt by another under such circumstances that he is in equity entitled to the security or obligation held by the creditor whom he has paid.	Does equitable subrogation arise by operation of law when one having a liability or right or a fiduciary relation in the premises pays a debt by another under such circumstances that he is in equity entitled to the security or obligation held by the creditor whom he has paid?	Subrogation - Memo #460 - C - SU.docx	R055-003327712-R055-003327713	Condensed, SA	0.66	0	1	0	1	
										0	1	0	1	
197	Morgan Creek Residential v. Meno, 153 Cal. App. 4th 675	36-61	The creditor or claimant whose rights he seeks to enforce in relation to the debtor's obligation to the creditor or claimant, the "subrogee" is equitably subrogated to the claimant (or "subrogor"), and succeeds to the subrogor's rights against the obligor. [Citation]. "As now applied [equitable subrogation] is broad enough to include every instance in which one person, not acting as a mere volunteer or intruder, pays a debt for which another is primarily liable, and which in equity and good conscience should be paid by him." In re Estate of Heston, 153 Cal.App.4th 99, 129P1292, 77 Cal.Rptr.2d 296, (alics omitted) "One who claims to be equitably subrogated to the rights of a secured creditor must satisfy certain prerequisites. These are: "(1) Payment must have been made by the subrogee to protect his own interests. (2) The subrogee must not have acted as a volunteer. (3) The debt paid must be one for which the subrogee was not primarily liable. (4) The entire debt must have been paid. (5) Subrogation must not work any injustice to the rights of others." (Citations)." (Cairo v. United States National Bank (1978) 20 Cal.3d 694, 704, 544 P.2d 731, 57 P.S.2d 466.) (Emph.)."	"Subrogation" is defined as the substitution of another person in place of the creditor or claimant to whose rights he or she succeeds in relation to the debtor's obligation to the creditor or claimant, the "subrogee" is equitably subrogated to the claimant, or "subrogor," and succeeds to the subrogor's rights against the obligor.	Is subrogation defined as the substitution of another person in place of the creditor or claimant to whose rights he or she succeeds in relation to the debtor's obligation to the creditor or claimant, the "subrogee" is equitably subrogated to the claimant, or "subrogor," and succeeds to the subrogor's rights against the obligor?	Subrogation - Memo #510 - C - SU.docx	R055-003388145-R055-003288147	Condensed, SA	0.71	0	1	0	1	
										0	1	0	1	
198	World Wide Minerals, Ltd v. Republic of Kazakhstan, 296 F.3d 1154	221+342	The act of state doctrine "precludes the courts of this country from inquiring into the validity of the public acts a recognized foreign sovereign power committed within its own territory." Banco Nacional de Cuba v. Sabbatino, 376 U.S. 598, 401 S.Ct.923,926, 11 L.Ed.2d 844 (1964). The act of state doctrine precludes judicial inquiry into the official act of a foreign sovereign performed within its boundaries. W.S. Kirpatrick & Co., Inc. v. Environmental Technologies Corp., 493 U.S. 400, 405, 110 S.Ct. 701, 704, 107 L.Ed.2d 816 (1990). When it does apply, the doctrine serves as "a rule of decision for the courts of this country." Id. at 405, 110 S.Ct. at 704 (quoting Ricard v. American Metal Co., 246 U.S. 304, 310, 38 S.Ct. 312, 314, 62 L.Ed. 733 (1918)), which requires that, "in the process of deciding [t] case], the acts of foreign sovereigns taken pursuant to their official authority, and those of their officials acting within their jurisdiction, shall not be subject to judicial scrutiny by our courts." Id. at 707. Although the Supreme Court's description of the jurisprudential rationale for the doctrine has evolved over the years, the Court has most recently described it "as a consequence of domestic separation-of-powers, reflecting "the strong sense of the Judicial Branch that its engagement in the task of passing on the validity of foreign acts of state may hinder" the conduct of foreign affairs." Id. at 404, 110 S.Ct. at 704 (quoting Sabbatino, 376 U.S. at 623, 84 S.Ct. at 938). The policies underlying the doctrine include "international comity, respect for the independence of other nations, and the avoidance of undue interference of embassies sent to the Executive Branch in its conduct of foreign relations." Id. at 408, 110 S.Ct. at 706; see id. at 409, 110 S.Ct. at 707-07.	The "act of state doctrine" precludes the courts of the United States from inquiring into the validity of the public acts a recognized foreign sovereign power committed within its own territory, and is applicable when the relief sought or the defense interposed would require a court in the United States to determine invalid the official act of a foreign sovereign performed within its boundaries.	Does the act of date doctrine preclude United States courts from inquiring into the validity of the public acts of a recognized foreign sovereign power committed within its own territory?	International Law - Memo #77 - C - LC.docx	R055-003282520-R055-003282522	Condensed, SA	0.78	0	1	0	1	
										0	1	0	1	

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199	United States v. Sum of 570,990,605, 234 F. Supp. 3d 112	221+342	To accept the Shadman Claimants' invitation to construe the act of state doctrine to apply here would drastically expand the scope of the rule; it would apply in virtually any case in which a foreign government issues a formal decree or decision that declares that a position taken by a litigant in a court in the United States is contrary to an international agreement or the laws of the foreign state. Such a rule would not only break with centuries of practice and precedent, but would undermine the core tenets of the act of state doctrine that courts should respect "the proper distribution of functions between the judicial and political branches of the Government on matters bearing upon foreign affairs." Sabatino, 376 U.S. at 427-28, 84 S.Ct. 923. The fact that a case might frustrate the expectations or views of a foreign state, moreover, is no reason for a court to disregard the principle that "[c]ourts in the United States have the power, and ordinarily the obligation, to decide cases and controversies properly presented to them." Kirkpatrick, 493 U.S. at 409, 110 S.Ct. 701. "The act of state doctrine does not establish an exception for cases or controversies that may embarrass foreign governments, but merely requires that, in the process of deciding, the acts of foreign sovereigns taken within their own jurisdiction shall be deemed valid." Id. (emphasis added).	The act of state doctrine does not establish an exception for cases or controversies that may embarrass foreign governments, but merely requires that, in the process of deciding, the acts of foreign sovereigns taken within their own jurisdiction shall be deemed valid.	"Does the act of state doctrine establish an exception for cases or controversies that may embarrass foreign governments, but merely requires that, in the process of deciding, the acts of foreign sovereigns taken within their own jurisdiction shall be deemed valid?"	013955.docx	LEGALASE-00122823-LEGALASE-00122824	Condensed, SA	0.61	839	1	15,344	34,873	21,876	9,029
	Republic of Iraq v. ABB AG, 768 F.3d 145	221+342	Of course, not every action that happens to be taken by officials of a foreign state is properly attributable to that state. For instance, in considering the applicability of the act-of-state doctrine "the affirmative defense that precludes the courts of this country from inquiring into the validity of the public acts of a recognized foreign sovereign power committed within its own territory, courts distinguish between public and private acts of a foreign official." Sabatino, 376 U.S. 398, 401, 84 S.Ct. 923, 11 L.Ed.2d 804 (1964) ("Sabatino") courts distinguish "between public and private acts of a foreign official." Republic of the Philippines v. Marcos, 806 F.2d 344, 359 (2d Cir.1986) ("Marcos"), cert. denied, 481 U.S. 1048, 107 S.Ct. 2178, 95 L.Ed.2d 835 (1987); see, e.g., Jimenez v. Aristeguieta, 311 F.2d 547, 557-58 (9th Cir.1962), cert. denied, 373 U.S. 914, 83 S.Ct. 1802, 10 L.Ed.2d 435 (1963).	In considering the applicability of the act-of-state doctrine, that is, the affirmative defense that precludes the courts of this country from inquiring into the validity of the public acts of a recognized foreign sovereign power committed within its own territory, courts distinguish between public and private acts of a foreign official.	"In considering the act-of-state doctrine, does the affirmative defense that precludes the courts of this country from inquiring into the validity of the public acts of a recognized foreign sovereign power committed within its own territory, courts distinguish between public and private acts of a foreign official?"	020087.docx	LEGALASE-00123394-LEGALASE-00123396	Condensed, SA	0.61	0	1	0	0	1	
200															
	State v. Grubb, 28 Ohio St. 3d 199	110+10342	Again, it is the interlocutory or tentative nature of the motion which compels us to reach this conclusion. The effect of the granting of a motion in limine in favor of the state in a criminal proceeding is to temporarily prohibit the defendant from making reference to evidence which is the subject of the motion. At trial it is incumbent upon a defendant, who has been temporarily restricted from introducing evidence by virtue of a motion in limine, to seek the introduction of the evidence by proffer or otherwise in order to enable the court to make a final determination as to its admissibility and to preserve any objection on the record for purposes of appeal. Cf. State v. Gilmore, supra. In the case at bar, appellant failed to make any such proffer and therefore we conclude, consistent with Evid.R. 103, that he waived his right to object to the evidentiary issue on appeal.	At trial, it is incumbent upon defendant, who has been temporarily restricted from introducing evidence by virtue of grant of motion in limine in favor of State, to seek introduction of the evidence by proffer or otherwise in order to enable trial court to make final determination as to its admissibility and to preserve any objection on record for purposes of appeal.	"Must a party who has been temporarily restricted from introducing evidence must seek to introduce it at trial in order to enable court to make final determination as to its admissibility and to preserve any objection on record?"	032173.docx	LEGALASE-00122759-LEGALASE-00122760	SA, Sub	0.58	0	0	1	1	1	
201															
	Philadelphia Gear Corp. v. Philadelphia Gear de Mexico, S.A., 44 F.3d 187	221+62	In general, "to under the principle of international comity, a domestic court normally will give effect to executive, legislative, and judicial acts of a foreign nation." Remington Rand v. Business Sys. Inc., 830 F.2d 1260, 1266 (3d Cir.1987). More specifically, we have stated that "[c]omity should be withheld only when its acceptance would be contrary or prejudicial to the interest of the nation called upon to give it effect." Somportex Ltd. v. Philadelphia Cheung Gum Corp., 453 F.2d 435, 440 (3d Cir.1971) (citations and footnote omitted), cert. denied, 405 U.S. 1017, 92 S.Ct. 1258, 32 L.Ed.2d 479 (1970). Thus, a court may, within its discretion, deny comity to a foreign judicial act if it finds that the extension of comity "would be contrary or prejudicial to the interest of the" United States.	Under principle of "international comity," domestic court normally will give effect to executive, legislative, and judicial acts of a foreign nation, and comity should be withheld only when its acceptance would be contrary or prejudicial to the interest of the nation called upon to give it effect.	"Under principle of "international comity," will domestic courts normally give effect to executive, legislative, and judicial acts of a foreign nation, and should comity be withheld only when its acceptance would be contrary or prejudicial to the interest of the nation called upon to give it effect?"	020354.docx	LEGALASE-00124686-LEGALASE-00124687	Condensed, SA	0.63	0	1	0	1	1	
202															
	United States v. Libs of Virginia, 272 F. Supp. 2d 764	221+42	A similar analysis also colors our disposition of Defendants' act of state doctrine arguments. The act of state doctrine prohibits United States courts from sitting in judgment of official acts taken by another country within its own border that might frustrate the conduct of foreign relations by the political branches of the government. W.S. Kirkpatrick & Co., Inc. v. Evnd. Technologies Corp. Int'l, 493 U.S. 400, 408, 110 S.Ct. 701, 107 L.Ed.2d 816 (1990). The policies underlying the doctrine include "international comity, respect for the sovereignty of foreign nations on their own territory, and the avoidance of embarrassment to the Executive Branch in its conduct of foreign relations." Id.; United States v. 2507 Live Canary Winged Parakeets, 689 F.Supp. 1106, 1120 (S.D.Fla.1988). Thus, the doctrine requires that courts "not adjudicate a politically sensitive dispute which would require the court to judge the legality of the sovereign act of a foreign state." Md. Jec. v. Peoples Rep. of Bangl., 572 F.Supp. 79, 83 (D.Or.1983) (internal citations and quotations omitted). That is, the act of state issues arise only when "a court must decide" that is, when the outcome of the case turns upon "the effect of official action by a foreign sovereign. When that question is not in the case, neither is the act of state doctrine." W.S. Kirkpatrick, 493 U.S. at 406, 110 S.Ct. 701.	Does the act of state doctrine prohibit United States courts from sitting in judgment of official acts taken by another country within its own borders that might frustrate the conduct of foreign relations by the political branches of the government?		020210.docx	LEGALASE-00124455-LEGALASE-00124456	Condensed, SA	0.82	0	1	0	0	1	
203															

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ROW	Judicial Opinion	WKS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
209	Cramer v. Roberts, 19 N.J. Super. 1	150v7111	In Atlantic City v. City Service Commission, 3 N.J. Super. 57, 65 A.2d 535, 1536 (App. Div. 1949), the court said: "facts in a general sense is neglect, for an unreasonable and unexplained length of time, under circumstances permitting diligence, to do what in law should have been done. . . . Long lapse of time, if unexplained, may create or justify a presumption that right, if ever possessed by plaintiff, has been lost or become obscured, or that conditions have changed since plaintiff's right accrued, or that defendant would be prejudiced by enforcement of plaintiff's claim."	Long lapse of time before asserting right claimed by plaintiff if unexplained, may create or justify presumption against existence or validity of such right and in favor of defendant's adverse right, or presumption that right, if ever possessed by plaintiff, has been lost or become obscured, or that conditions have changed since plaintiff's right accrued, or that defendant would be prejudiced by enforcement of plaintiff's claim.	Will a long lapse of time creates a presumption that a valid right never existed?	035598.docx	LEGALCASE-00127996-LEGALCASE-00127997	SA, Sub	0.42	839	15,344	14,873	21,876	9,029
210	Perdue v. Mitchell, 1373 So. 2d 650	307A-717-1	Continuances are not favored and the trial court's denial of a motion for continuance will be upset only when palpable or gross abuse of discretion is shown. Johnson Publishing Co. v. Davis, 27 Ala. 474, 124 So. 2d 441 (1956). Continuances are not favored and the trial court's denial of a motion for continuance because of the absence of witnesses where plaintiff fails to show due diligence by taking a deposition or procuring compulsory process. Knowles v. Blue, 209 Ala. 27, 95 So. 481 (1933). To warrant a continuance because of the absence of a witness, it must be shown (1) that the expected evidence will be material and competent; (2) a probability that the testimony can be obtained at a future date to which the cause may be continued or postponed; (3) due diligence having been exercised by movant to secure absent witnesses; or evidence that expected evidence must be credible and will probably affect the result; (5) the evidence must not be merely cumulative or impeaching; (6) that the motion for continuance is not made merely for purposes of delay. . . . Ex parte Driver, 258 Ala. 333, 237, 62 So.2d 341, 343 (1952).	To warrant continuance because of absence of witness, movant must show that expected evidence will be material and competent; that probability exists that testimony can be obtained at future date to which cause may be continued or postponed; that due diligence has been exercised by movant to secure absent witnesses; or evidence that expected evidence is credible and will probably affect results; that evidence is not merely cumulative or impeaching, and that motion for continuance is not made merely for purposes of delay.	"To warrant continuance because of the absence of the witness, movant must a movant show that expected evidence will be material and competent?"	Pretial Procedure- Memo # 2020 - C- No.docx	ROSS-003300817-ROSS-003300818	SA, Sub	0.54	0	0	1	1	1
211	Austin v. Gwett, 524 S.W.2d 617	307A-501	Tenn. R. Civ. P. 41.01(1) (3). Consequently, "[a] plaintiff's right to a voluntary dismissal without prejudice is subject to the exceptions expressly stated in Rule 41.01(1) as well as to an implied exception which prohibits nonsuit when it would deprive the defendant of some vested right." Lacy v. Cox, 155 S.W.3d 480, 484 (Tenn. 2004) (footnote omitted) (citing Anderson v. Smith, 521 S.W.2d 787, 790 (Tenn. 1975)). In addition, a plaintiff is further limited to taking no more than two nonsuits without prejudice. Tenn. R. Civ. P. 41.01(2), and nonsuit cannot be taken after a plaintiff has been granted summary judgment. Tenn. R. Civ. P. 41.01(1) affords a plaintiff the free and unrestricted right to voluntary dismissal without prejudice before the jury retires. Ricketts v. Sexton, 333 S.W.2d 293, 294 (Tenn. 1976).	A plaintiff's right to voluntary dismissal without prejudice is subject to the exceptions expressly stated in rule of civil procedure governing voluntary dismissal as well as to an implied exception which prohibits nonsuit when it would deprive the defendant of some vested right. Tenn. R. Civ. P. 41.01(1).	Is a plaintiff's right to voluntary dismissal without prejudice subject to the exceptions expressly stated in rule of civil procedure governing voluntary procedure governing voluntary dismissal as well as to an implied exception which prohibits nonsuit when it would deprive the defendant of some vested right?	Partial Procedure- Memo # 2219 - C- No.docx	ROSS-003303793-ROSS-003303794	SA, Sub	0.65	0	0	1	1	1
212	Wren v. McBurn, 892 S.W.2d 725	307A-517-1	In performing its ministerial function in denying a motion for summary judgment, the trial court does not substitute the merits of the case. The court merely places the parties in the position they were in before the action was brought. Crofts v. Court of Civil Appeals, 362 S.W.2d 101, 104 (Tex. 1962) (orig. proceeding), and subject to certain conditions, as recognized by McDonald in section 27.39, supra, does not preclude the plaintiff from filing a subsequent action seeking the same relief. Aetna Cas. & Sur. Co. v. Spica, 849 S.W.2d 805, 806 (Tex. 1993) (orig. proceeding). The court's interpretation of the statute in the instant case would be barred by the interpretation of the statute of limitations, merely means that limitations is a bar to the action, not that the action is barred by the taking of the non-suit without prejudice.	In performing its ministerial function in denying a motion for summary judgment, the trial court does not substitute the merits of the case. The court merely places the parties in the position they were in before action was brought and subject to certain conditions, does not preclude plaintiff from filing subsequent action seeking same relief.	"In performing its ministerial function in denying a motion upon motion for summary judgment, the trial court does not substitute the merits of the case. The court merely places parties in position they were in before action was brought and subject to certain conditions, does not preclude plaintiff from filing subsequent action seeking same relief."	Partial Procedure- Memo # 2825 - C- No.docx	ROSS-003303091-ROSS-003303096	Condensed, SA	0.63	0	1	0	1	1
213	United States v. Demko, 385 U.S. 149	41-3+1	Historically, workmen's compensation statutes were the offspring of a desire to give redress to injured and more certain recovery than could be obtained through the common-law tort system. Such common-law defenses to such suits. This compensation law was practically always thought of as substitutes for, not supplements to, common-law tort actions. A series of comparatively recent cases in this Court has recognized this historic truth and ruled accordingly. Johnson v. United States, 343 U.S. 427, 72 S.Ct. 849, 96 L.Ed. 1051, and Patterson v. United States, 359 U.S. 465, 79 S.Ct. 396, 3 L.Ed. 497, for instance, are without special significance as precedents in this case. Johnson v. United States, 343 U.S. 427, 72 S.Ct. 849, 96 L.Ed. 1051, and Patterson v. United States, 359 U.S. 465, 79 S.Ct. 396, 3 L.Ed. 497, are not to be taken as authority for the proposition that Congress by specific statute could change the Johnson "policy" at any time." Consequently we decide this case on the Johnson principle that, where there is a compensation statute that reasonably and fairly covers a particular group of workers, it presumably is the exclusive remedy to protect that group.	Historically, workmen's compensation statutes were offspring of desire to give redress to injured and more certain recovery than could be obtained through the common-law tort system. Such common-law defenses to, not supplements to, common-law tort actions.	Historically, were workmen's compensation statutes the offspring of a desire to give redress to injured and more certain recovery than could be obtained through the common-law tort system. Such common-law defenses to, not supplements to, common-law tort actions?"	Workers Compensation- Memo # 777 ANC.docx	ROSS-003300428-ROSS-003300428	Condensed, SA	0.84	0	1	0	1	1

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214	<i>Sheets v. Hill Bros. Co.</i> , 379 S.W.2d 514	413+284	It is admitted, and plaintiffs' evidence affirmatively established, that plaintiff and employer were subject to the Missouri Workmen's Compensation Act. The Act provides that an employer who elects to accept the remedy it might have had at common law, Section 287.120(2) RSMo 1959, V.A.M.S. As stated in <i>Marie v. Standard Steel Works, Mo.</i> , 319 S.W.2d 871, 875, "The compensation act, is not supplemental or declaratory of any existing rule, right or remedy, but creates an entirely new right or remedy and where the employer and employee have elected to accept the provisions of the act [for are subject thereto by operation of law] such remedies, claims or rights accruing to her and against her employer for compensation or damages arising by reason of such injury were those provided for in the Workmen's Compensation Law to the exclusion of any common law or contractual right."	Workmen's Compensation Law is not supplemental or declaratory of any existing rule, right or remedy, but creates an entirely new right or remedy which is not subject thereto by operation of law. Employer and employee have elected to accept the law or are subject thereto by operation of law. Section 287.120, subd. 2, RSMo 1959, V.A.M.S.	"Is the Workmen's Compensation Law a supplement or declaratory of any existing rule, right or remedy, or does it create an entirely new right or remedy? If so, does it create a substitutional in character and supplant all other rights and remedies where the employer and employee have elected to accept the law or who are subject to it by operation of law?"	042875.docx	LEGALASE-0013262-2 LEGALASE-00132653	Order, SA	0.72	1	0	0	21,876	9,079
215	<i>Daugherty v. United States</i> , 212 F. Supp. 2d 1279	34+3[1]	Plaintiffs' APA claims are premised on plaintiffs' request that the Court order the setting aside and expungement from Commander Daugherty's personnel record all actions, findings, and conclusions resulting from the investigation of the alleged sexual harassment committed by her. Under the first step of the two-step justifiability test set forth in <i>Mindes</i> , "[a] court should not review internal military affairs in the absence of (a) an allegation of the deprivation of a constitutional right, or an allegation that the military has acted in violation of applicable statutes or its own regulations, and (b) exhaustion of available intraservice corrective measures. 453 F.2d at 1200. If these threshold requirements are met, the court "must examine the substance of the allegations in light of the facts and circumstances of the case." 453 F.2d at 1200. The following four factors: (1) the "nature and strength of the plaintiffs' challenge to the military determination"; (2) the "potential injury to the plaintiff if review is refused"; (3) the "type and degree of anticipated interference with the military function"; and the "extent to which the exercise of military expertise and discretion is involved." Id. at 201.	In determining whether to review internal military affairs, if threshold requirements for review are met, court must examine substance of allegations in light of policy reasons behind nonreview of military affairs. If threshold requirements are met, court must determine if plaintiffs' challenge to military determination, (2) potential injury to plaintiff if review is refused, (3) type and degree of anticipated interference with military function, and (4) extent to which exercise of military expertise and discretion is involved.	What are the factors to be considered in determining whether the court should review a military decision?	Armed Services - Memo 94 - JS.docx	LEGALASE-00023579-9 LEGALASE-00023580	SA, Sub	0.57	0	0	1	1	
216	<i>Medina v. Raven</i> , 892 S.W.3d 53	3074+486	Raven argues that the trial court's denial of plaintiffs' motion to order admissions was proper in part because the motion "attaches no affidavits or other evidence to support good cause, no prejudice or presentation of merits." But, "although a party moving to withdraw admissions ordinarily must prove the requirements of Rule 198.3, when the deemed admissions are merit-preclusive, good cause exists absent bad faith or callous disregard of the rules by the party seeking the withdrawal." Tex. R. Civ. P. 198.3(b). Although a party moving to withdraw admissions ordinarily must prove the requirements of the governing rule, when the deemed admissions are merit-preclusive, good cause exists absent bad faith or callous disregard of the rules by the party seeking the withdrawal. Tex. R. Civ. P. 198.3(b).	Although a party moving to withdraw admissions ordinarily must prove the requirements of the governing rule, when the deemed admissions are merit-preclusive, good cause exists absent bad faith or callous disregard of the rules by the party seeking the withdrawal. Tex. R. Civ. P. 198.3(b).	"Although a party moving to withdraw admissions ordinarily must prove the requirements of the governing rule, when the deemed admissions are merit-preclusive, good cause exists absent bad faith or callous disregard of the rules by the party seeking the withdrawal?"	026483.docx	LEGALASE-00134595- LEGALASE-00134596	SA, Sub	0.78	0	0	1	1	
217	<i>French v. Banco Nacional de Cuba</i> , 23 N.Y. 2d 46	221+359	In an area of international law where, for instance, there is a wide divergence "between the national interests of capital exporting nations and national interests of capital importing and capital exporting nations and countries that favor state control of a considerable portion of the means of production and those that adhere to a free enterprise system, would courts embark on adjudication which touches the practical and ideological goals of the various members of the community of nations?"	In area of international law where there is a wide divergence between national interests of capital importing and capital exporting nations and countries that favor state control of a considerable portion of the means of production and those that adhere to a free enterprise system judicial restraint is indicated.	"Given the divergence between the national interests of capital importing and exporting nations, and the countries that favor state control of a considerable portion of the means of production and those that adhere to a free enterprise system, would courts embark on adjudication which touches the practical and ideological goals of the various members of the community of nations?"	020746.docx	LEGALASE-00135811- LEGALASE-00135812	Condensed, SA	0.73	0	1	0	1	

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218	Somportex Ltd. v. Philadelphia Chewing Gum Corp., 453 F.2d 435	22+162	Comity is a recognition which one nation extends within its own territory to the legislative, executive, or judicial acts of another. It is not a rule of law but one of practice, convenience, and expediency. Although more force of an imperative or obligation. Rather, it is a nation's expression of understanding which demonstrates due regard both to its own laws and to the rights of persons protected by its own laws.	Although more than mere courtesy and accommodation, comity does not achieve the force of an imperative or obligation; rather, it is a nation's expression of understanding which demonstrates due regard both to its own laws and to the rights of persons protected by its own laws.	"% comity more than mere courtesy and accommodation, comity does not achieve the force of an imperative or obligation, or is it a nation's expression of understanding which demonstrates due regard both to its own laws and to the rights of persons protected by its laws?"	010751.docx	LEGALBASE-00135819- LEGALBASE-00135820	Condensed, SA	0.61	839 0	15,344 1	14,873 0	21,876 1	9,029
219	Andra v. Left Gate Prop. Holding, 453 S.W.3d 216	22B+183	When the motion to dismiss for lack of personal jurisdiction is based on facts not appearing in the record, a court may also consider affidavits and depositions properly filed in support of the motion to dismiss. Chromalloy Am. Corp. v. Elira Foundry Co., 955 S.W.2d 131-33 (Mo. banc, 1997); see also, e.g., Brown v. American Overseas Corp., 955 S.W.2d 133-34 (Mo. banc, 1997). Such consideration is not limited to the inquiry into the merits of the motion to dismiss for lack of personal jurisdiction. The inquiry is limited to an examination of the petition on its face and the supporting affidavits to determine the limited question of personal jurisdiction. Chromalloy, 955 S.W.2d at 3 n.3. The merits of the underlying case are not considered. Id. "The circuit court can believe or disbelieve any statement in such affidavits, and factual determinations are made on the basis of the evidence presented." Brown v. American Overseas, 955 S.W.2d 133 (Mo. banc 2001). Upon review, this Court must "affirm the trial court's ruling regarding jurisdiction" when the properly filed affidavits and depositions "show [defendants] did not commit any act sufficient to invoke" personal jurisdiction. Chromalloy, 955 S.W.2d at 4 (internal citation omitted). But "the sufficiency of the evidence to make a prima facie showing that the trial court may exercise personal jurisdiction is not the sole consideration in the exercise of jurisdiction." Brown, 310 S.W.3d at 231 (internal citations and citation omitted). Review of the evidence must be on a case-by-case basis that cannot be "simply mechanical or quantitative" but instead "must depend rather upon the quality and nature of the activity." Int'l Shoe Co. v. Washington, 326 U.S. 310, 315, 66 S.Ct. 154, 90 L.Ed. 95 (1945); see also People Bank, 218 S.W.3d at 130.	A trial court's consideration of affidavits and depositions in ruling on a nonresident defendant's motion to dismiss for lack of personal jurisdiction, as allowed where the motion is based on facts not appearing in the record, does not serve to convert the motion to dismiss into a motion to dismiss for lack of personal jurisdiction. The inquiry is limited to an examination of the petition on its face and the supporting affidavits to determine the limited question of personal jurisdiction, and the merits of the underlying case are not considered. Mo. Sup. Ct. R. 55.28.	"Does a trial court's consideration of affidavits and depositions in ruling on a nonresident defendant's motion to dismiss for lack of personal jurisdiction, not serve to convert the motion to dismiss into a motion for summary judgment?"	012878.docx	LEGALBASE-00140013- LEGALBASE-00140020	Condensed, SA, Sub	0.68	0 1	1 1	1 1	1 1	1
220	Chacha v. Temp. USA, 78 So. 4727	307A+463	The requisite fraud on the court occurs where "it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier of fact." See also, e.g., Aduke v. Mobil Oil Corp., 890 F.2d 1115, 1118 (11 Cir. 1990).	The requisite fraud on the court occurs where "it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier of fact." See also, e.g., Aduke v. Mobil Oil Corp., 890 F.2d 1115, 1118 (11 Cir. 1990).	"Does the requisite fraud on the court occur, as basis for dismissing a claim, where it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier of fact, and, if so, does the presentation of the opposing party's claim or defense.	034416.docx	LEGALBASE-00143574- LEGALBASE-00143575	SA, Sub	0.07	0 0	0 0	1 1	1 1	1
221	Cohn v. W.C.A.B. (City of Philadelphia), 589 Pa. 498	41+32	Moreover, we agree with Claimant that, in recognition of the special character of the Pennsylvania workers' compensation system, it is preferable to preclude the determination of disability for purposes of the Act by a trier of fact. The Act is a creature of public policy, as opposed to by a local civil service commission. As this Court has previously explained, the Workers' Compensation Act's "uniquely detailed substantive and procedural provisions" supplant traditional common law rights and remedies, limiting recoveries in a manner that, in any other context, would be beyond the Legislature's authority. East, 574 Pa. at 25, 828 A.2d at 1021. Philadelphia's civil service regulations, on the other hand, are not subject to the same scrutiny and are not necessarily different focus, as they encompass many other forms of employment actions and decisions, with which Regulation 32 benefits are intermingled. Consequently, the Commission administrators' appeals concerning a materially broader range of subject matter extrinsic to the uniquely structured environment of the Workers' Compensation Act.	Workers' Compensation Act's uniquely detailed substantive and procedural provisions supplant traditional common law rights and remedies, limiting recoveries in a manner that, in any other context, would be beyond the Legislature's authority. 77 Pa.2 S. 901, et seq.	"Do the workers compensation act uniquely detailed substantive and procedural provisions supplant traditional common law rights and remedies, and would limiting recoveries be beyond the legislature's authority? In other context, be beyond the legislature's authority?"	040800.docx	LEGALBASE-00144257- LEGALBASE-00144258	Condensed, SA	0.76	0 0	1 1	0 0	1 1	1
222	Paul v. Smith, Gambrell & Russell, 232 Ga. App. 447	307A+500.1	OCCA "9-29(b)(8) and 97-115 (16) are the statutory embodiment of the "five-year rule." Together, they provide for the automatic dismissal of an action filed in a Georgia court of record when "no written order is taken for a period of five years[.]" 290 P.3d at 1189, 283 Ga. 396, 658 S.E.2d 667 (2008). The five-year rule is "a reasonable procedural rule" that serves "the dual purpose of preventing court records from becoming cluttered by inaction and protecting litigants from becoming overwhelmed by the volume of records from becoming cluttered by inaction from dilatory counsel." (Citation and punctuation omitted.) Brown v. Kroger Co., 278 Ga. 65, 68, 597 S.E.2d 382 (2004). These Code sections are mandatory, and dismissal occurs by operation of law. Republic Claims Sac. Co. v. Hoyal, 264 Ga. 327, 328, 441 S.E.2d 755 (1994); Roberts v. Eyras, 297 Ga. App. 821, 821(2), 678 S.E.2d 535 (2009). We apply a bright-line rule for determining whether an order is sufficient to reset the five-year period. See Brown v. Kroger Co., 278 Ga. 65, 68, 597 S.E.2d 382 (2004). "In order to toll the running of the five-year period that results in automatic dismissal for non-action, an order must be written, signed by the trial judge, and properly entered in the records of the trial court by filing it with the clerk." (Citation and punctuation omitted.) Id.	The statutory "five-year rule," which provides for the automatic dismissal of an action when no written order is taken for a period of five years, is a reasonable procedural rule that serves the dual purpose of preventing court records from becoming cluttered by unresolved and inactive litigation and of protecting litigants from dilatory counsel. (Per Miller, J., 680 U.S. 911-916).	"Is the statutory "five-year rule," which provides for the automatic dismissal of an action when no written order is taken for a period of five years, a reasonable procedural rule?"	013265.docx	LEGALBASE-00146003- LEGALBASE-00146004	Condensed, SA	0.65	0 0	1 1	0 0	1 1	1

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223	Con v. Burke, 706 So. 2d 43	307A+563	The requisite fraud on the court occurs where "it can be demonstrated, clearly and convincingly, that a party has the ability to present its case fairly and truthfully, but the judicial system's ability impartially to adjudicate a matter by properly influencing the trial of fact or unfairly hampering the presentation of opposing party's claim or defense." (1st Cir. 1989). When reviewing a case for fraud, the court should "consider the proper mix of factors" and carefully balance a policy favoring adjudication on the merits with competing policies to maintain the integrity of the judicial system. <i>Id.</i> at 1117-18. Because "dismissal is not warranted unless the fraud is egregious," <i>id.</i> at 1118.	Requisite fraud on the court, justifying extraordinary measure of dismissal, occur where it can be demonstrated, clearly and convincingly, that a party has the ability to present its case fairly and truthfully, but the judicial system's ability impartially to adjudicate a matter by properly influencing the trial of fact or unfairly hampering presentation of opposing party's claim or defense.	"Does the requisite fraud on the court occur where it can be demonstrated, clearly and convincingly, that a party has the ability to present its case fairly and truthfully, but the judicial system's ability impartially to adjudicate a matter by properly influencing the trial of fact or unfairly hampering presentation of opposing party's claim or defense?"	035483.docx	LEGALISE-00146235-LEGALISE-00146237	SA, Sub	0.54	0	1	14,873	21,876	9,029
224	U.S. ex rel. De Luca v. O'Rourke, 213 F.2d 759	24+101	Aliens, so long as they are permitted to remain in the United States, are entitled to the protection of its Constitution and laws with respect to their rights of person and of property and to their civil and criminal rights. It is not the duty of the courts to subject aliens to summary removal and deportation from the country, whenever, in its judgment, their removal is necessary or expedient for the public interest." <i>Fong Yue Ting v. United States</i> , 149 U.S. 698, 724, 13 S.Ct. 1035, 1026, 37 L.Ed. 905.	Aliens, so long as they are permitted to remain in the United States, are entitled to protection of its Constitution and laws with respect to their rights of person and of property and to their civil and criminal rights. It is not the duty of the courts to subject aliens to summary removal and deportation from the country, whenever, in its judgment, their removal is necessary or expedient for the public interest.	Are aliens in United States entitled to the protection of its Constitution and laws with respect to their rights in both criminal and civil proceedings against them?	Aliens_Jimmington and_1041264HW.indd.docx\Tvg7\LODP66ahu of.docx	ROSS-000000290	Condensed, SA	0.17	0	1	0	1	
225	Thomas v. Pierce, 87 Ark. App. 26	307A+422	In determining whether to dismiss a complaint under Rule 12(b)(6), it is improper for the trial court to look beyond the complaint to decide the merits of the case. The complaint must be taken as true, and the trial court must find that the complaint states a claim for which relief could be granted. (1) failed to state a claim; (2) failed to include specific facts upon which relief could have been granted or (2) failed to include specific facts pertaining to one or more of the elements of one of its claims after accepting all facts contained in the complaint as true and in the light most favorable to the nonmoving party. <i>Bethel Baptist Church v. Church Mutual Insurance Co.</i> , 54 Ark.App. 262, 294 S.W.2d 494 (1996).	In order to properly dismiss a complaint for failure to state a claim upon which relief can be granted, the trial court must find that the complaint states a claim for which relief could be granted. (1) failed to state a claim; (2) failed to include specific facts pertaining to one or more of the elements of one of its claims after accepting all facts contained in the complaint as true and in the light most favorable to the nonmoving party. <i>Rules Civ.Proc., Rule 12(b)(6)</i> .	"In order to properly dismiss a complaint for failure to state facts upon which relief can be granted, what should the circuit court find?"	036997.docx	LEGALISE-00150346-LEGALISE-00150347	SA, Sub	0.25	0	0	1	1	
226	Perez v. Lifetime Entertainment, 147 A.D.3d 1253	307A+679	On a motion to dismiss a complaint pursuant to CPLR 3211(a)(7), the court must accept the facts as alleged in the complaint as true, accord the plaintiff the benefit of every favorable inference and determine only whether the facts alleged fit within any cognizable legal theory. <i>McKinney's CPLR 3211(a)(7)</i> .	On a motion to dismiss a complaint for failure to state a cause of action, a court must afford the complaint a liberal construction, accept as true the allegations contained therein, accord the plaintiff the benefit of every favorable inference and determine only whether the facts alleged fit within any cognizable legal theory. <i>McKinney's CPLR 3211(a)(7)</i> .	"On a motion to dismiss a complaint for failure to state a cause of action, should a court afford the complaint a liberal construction?"	037087.docx	LEGALISE-00150984-LEGALISE-00150985	SA, Sub	0.6	0	0	1	1	
227	Kasab v. Kasab, 137 A.D.3d 1135	307A+624	In deciding a motion to dismiss a complaint pursuant to CPLR 3211(a)(7), the court must accept the facts as alleged in the complaint as true, accord the plaintiff the benefit of every favorable inference, and determine only whether the facts alleged fit within any cognizable legal theory. <i>McKinney's CPLR 3211(a)(7)</i> .	In deciding a motion to dismiss a complaint for failure to state a cause of action, a court must afford the complaint a liberal construction, accept as true the allegations contained therein, accord the plaintiff the benefit of every favorable inference, and determine only whether the facts alleged fit within any cognizable legal theory. <i>McKinney's CPLR 3211(a)(7)</i> .	"In deciding a motion to dismiss a complaint for failure to state a cause of action, should a court accept the facts alleged in the complaint as true?"	037208.docx	LEGALISE-00150984-LEGALISE-00150985	Condensed, SA	0.28	0	1	0	1	
228	Meyer v. N. Shore Long Island Jewish Health Sys., 137 A.D.3d 880	307A+680	In considering a motion to dismiss a complaint pursuant to 3211(a)(7), the court must accept the facts as alleged in the complaint as true, accord the plaintiff the benefit of every favorable inference, and determine only whether the facts alleged fit within any cognizable legal theory. <i>McKinney's CPLR 3211(a)(7)</i> .	A court may consider evidentiary material submitted by a defendant in support of a motion to dismiss, when evidentiary material is considered in the light most favorable to the plaintiff. The criteria is whether the plaintiff has a cause of action, not whether he or she has stated one, and, unless it has been shown that a material fact is claimed by the plaintiff to be one is not a fact at all and unless it can be said that no significant dispute exists regarding it, dismissal should not eventuate. <i>McKinney's CPLR 3211(a)(7)</i> , (c).	"When evidentiary material is considered on a motion to dismiss a complaint, is the criterion whether the plaintiff has a cause of action?"	Pretrial Procedure- Memo #8704 - C-880V_25741.docx	ROSS-00281501-ROSS-00281503	Condensed, SA, Sub	0.51	0	1	1	1	

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229	Carnwell v. State of Connecticut, 310 U.S. 296 F.3d 147	1239-109	The offense known as breach of the peace embraces a great variety of conduct, destroying or menacing public order and tranquility. It includes not only violent acts but acts and words likely to produce violence in others. No one would have the hardihood to suggest that the principle of freedom of speech sanctions incitement to riot or that religious liberty belongs exclusively to those who profess no religion. Acts of violence belonging to another sect. When clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order, appears, the power of the state to prevent or punish is obvious. Equally obvious is it that a state may not unduly suppress free communication of views, religious or other, under the guise of conserving desirable conditions. Here we have a situation analogous to a conviction under a statute sweeping in a great variety of conduct which raises a question whether its application is leading to the exercise of judicial branch to wide a discretion in its application.	The state has power to prevent or punish when clear and present danger of riot, disorder, interference with traffic upon public streets, or other immediate threat to public safety, peace or order, appears, but state may not unduly suppress free communication of views, religious or other, under guise of conserving desirable condition.	Whether this state has the power to prevent or punish when a clear and present danger of interference with traffic upon public streets appear?	Disorderly Conduct- Memo 125- PH_00853.docx	ROSS-003280412-ROSS-003280412	Ordin SA	0.69	839	15,344	14,873	21,876	9,029
230	Podberesky v. Kiwan, 38 F.3d 147	141E-1234	In determining reference pool in analyzing whether underrepresentation of African-American students in university student body is present effect of past discrimination which will justify race-conscious scholarship program, court considered whether racial considerations contributed to permit inference that racial considerations contributed to remaining disparity. U.S.C.A. Const-Amend. 14. Racial tensions which still exist in American society, including on campuses of institutions of higher learning, are not sufficient ground for employing race-conscious remedy to cure present effects of past discrimination under equal protection clause.	Indetermining reference pool in analyzing whether underrepresentation of African-American students in university student body is present effect of past discrimination which will justify race-conscious scholarship program, court considered whether racial considerations contributed to permit inference that racial considerations contributed to remaining disparity. U.S.C.A. Const-Amend. 14.	Can universities remedy past discrimination through race-conscious programs under Equal Protection Clause?	016772.docx	LEGALBASE-00153764-LEGALBASE-00153765	Condensed, SA	0.36	0	1	0	1	
231	Wilner v. Altabe Inc. Co., 71 A.D.3d 155	307A-624	In determining a motion to dismiss pursuant to CPLR 3211(a)(7), the sole criterion is whether the pleading states a cause of action, and from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law. A motion for dismissal will fail if "the complaint must be liberally construed in the light most favorable to the plaintiff and all facts alleged are accepted as true." People v. Martinez, 84 N.Y.2d 683, 97, 684, 679, 679, 378 N.Y.S.2d 421. "[T]he complaint must be liberally construed in the light most favorable to the plaintiff and all facts alleged are accepted as true." People v. Martinez, 84 N.Y.2d 683, 97, 684, 679, 679, 378 N.Y.S.2d 421. Affidavits may be received, and the court may freely consider them for the limited purpose of remedying any defects in the complaint [see Leon v. Martinez, 84 N.Y.2d at 88, 654 N.Y.S.2d 697, 638 N.E.2d 511; Fitzgerald v. Federal Signal Corp., 63 A.D.3d 994, 995, 883 N.Y.S.2d 67].	Indetermining a motion to dismiss, the sole criterion is whether the pleading states a cause of action, and from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law a motion for dismissal at will fail. McKinnis's CPLR 3211(a)(7).	Is the sole criterion indetermining a motion to dismiss pursuant to CPLR 3211(a)(7) that factual allegations of a pleading's four corners are discerned which taken together manifest any cause of action cognizable at law a motion for dismissal for failure to state a cause of action?	038637.docx	LEGALBASE-00153980-LEGALBASE-00153981	Condensed, SA, Sub 0.71	0	1	1	1	1	
232	City of Los Angeles v. Gleagle Dev. Co., 62 Cal App. 3d 543	307A-581	With the passage of Rule 2015.5, imposing on the trial judge the duty to examine specifically enumerated factors, including the delay attributable to Either party, the interests of justice, and other facts or circumstances relevant to a fair determination of the issue, this "presumption of prejudice" retains questionable validity. Its harsh cut off a plaintiff's remedy to an apparently meritorious cause of action based merely on a presumption of prejudice to defendants, without more. The penalty of dismissal is too severe a sanction for what amounts to a mere lack of care; and where it appears that the plaintiff has a good cause of action, that plaintiff has made some showing of excuse for delay; and where defendant does not claim actual prejudice and has waited until the last possible moment to file a motion to dismiss, the ends of substantial justice are best met by a preference for the policy of favoring trials on the merits as contrasted with that policy which favors presumptions of prejudice. The reason is that, in the absence of prejudice to defendants, the presumption of prejudice is unwarranted. Where there is no evidence of miscarriage of justice is greater when a trial on the merits is denied than it is where plaintiff is permitted to proceed.	Fewly of dismissal against a dilatory plaintiff should be exercised with utmost care and when it appears that plaintiff has a good cause of action the plaintiff has made some showing of excuse for delay, and where defendant does not claim actual prejudice and has waited until last possible moment to file a motion to dismiss, ends of substantial justice are best met by preference for policy of favoring trial on merits as contrasted with policy which favors presumption of prejudice.	Should penalty of dismissal against a dilatory plaintiff be exercised with utmost care?	Pretial Procedure- Memo #1698 - C- VP_51598.docx	ROSS-003283047-ROSS-003283048	Condensed, SA	0.62	0	1	0	1	
233	Robinson v. Trenton Dressed Poultry Co., 344 Pa. Super. 545	307A-697	When an action is dismissed, with prejudice, for failure to prosecute a claim, it is contemplated that that action is terminated unless the plaintiff takes positive steps to reinstate the cause of action within the applicable period of time. In Robinson v. Trenton Dressed Poultry Co., 344 Pa. Super. 545, explained in Thompson v. Corneio, 41 Pa. Commw. 174, 388A.2d 1079 (1979), when an action is dismissed with prejudice for failure to prosecute a claim, it is not a denial of relief to the plaintiff because it is not an adjudication on the merits; rather, it means only that the plaintiff whose complaint is thus dismissed cannot restate that complaint unless he first petitions the court to exercise its discretion to remove the non pros and establishes certain facts. The underlying reasons for such a dismissal are that the plaintiff failed to take the steps required for removal from the docket of cases which would otherwise clutter it for an unreasonable length of time. Cf. Bon Homme Richard Restaurants, Inc. v. Three Rivers Bank & Trust Company, supra.	When an action is dismissed with prejudice for failure to prosecute a claim, it is not a denial of relief to plaintiff because it is not an adjudication on the merits; rather, it means only that plaintiff whose complaint is thus dismissed cannot restate that complaint unless he first petitions the court to exercise discretion to remove the non pros and establish certain facts.	Can a plaintiff restate a complain unless he first petitions a court to exercise its discretion to remove the non pros and establish certain facts?	Pretial Procedure- Memo #10021 - C- VP_53729.docx	ROSS-003281373-ROSS-003281374	Condensed, SA	0.64	0	1	0	1	

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234	Carrillo v. Superior Court, 145 Cal. App. 4th 1511	135H+96	Once a defendant is placed on trial in a court of competent jurisdiction, on a valid accusatory pleading, before a jury duly impaneled and sworn, a discharge of that jury without a verdict is equivalent in law to an acquittal and bars a retrial, unless the defendant consents to the discharge or legal necessity requires it. U.S.C.A. Const.Amend. 5, 14; West's Ann.Cal. Const. Art. 1, § 15.	Once a defendant is placed on trial in a court of competent jurisdiction, on a valid accusatory pleading, before a jury duly impaneled and sworn, a discharge of that jury without a verdict is equivalent in law to an acquittal and bars a retrial, unless the defendant consents to the discharge or legal necessity requires it. U.S.C.A. Const.Amend. 5, 14; West's Ann.Cal. Const. Art. 1, § 15.	"Once a defendant is placed on trial in a court of competent jurisdiction, on a valid accusatory pleading, before a jury duly impaneled and sworn, a discharge of that jury without a verdict is equivalent in law to an acquittal and bars a retrial, unless the defendant consents to the discharge or legal necessity requires it. U.S.C.A. Const.Amend. 5, 14; West's Ann.Cal. Const. Art. 1, § 15."	015063.docx	LEGASE-00162474- LEGASE-00162475	SA, Sub	0.58	0	0	14,273	21,876	9,029
235	People v. Hashbun, 238 A.D.2d 521	135H+25	In United States v. Ursey, 538 U.S. 267, 116 S.Ct. 2135, 135 L.Ed.2d 549 (1996), the Supreme Court set forth a two-prong test to determine whether a civil forfeiture proceeding constitutes punishment for purposes of double jeopardy including the questions of: (1) whether the government has initiated a prosecution against the defendant; and (2) whether the proceeding is punitive. In a "may" not be legally viewed as civil in nature." United States v. Ursey, supra, 538 U.S. at _____. 116 S.Ct. at 2147, quoting United States v. One Assortment of 89 Firearms, 465 U.S. 354, 366, 104 S.Ct. 1099, 1107, 79 L.Ed.2d 361; see also, Cordova v. Lator, supra; People v. Roach, supra).	Under United States Supreme Court's Ursey decision, court determining whether civil forfeiture proceeding constitutes punishment for double jeopardy purpose considers whether legislature intended proceeding to be criminal or civil in nature, and whether proceeding is so punitive that it may not legitimately be viewed as civil in nature. U.S.C.A. Const.Amend. 5.	"Under the United States Supreme Court's Ursey decision, does a court determining whether civil forfeiture proceeding constitutes punishment for double jeopardy purposes consider whether legislature intended proceeding to be criminal or civil in nature, and whether proceeding is so punitive that it may not legitimately be viewed as civil in nature?"	Double jeopardy- Memo 313 - C- VP_56736.docx	ROSS-00327867-ROSS-00327868	Condensed, SA	0.48	0	1	0	1	
236	State v. Lamy, 2015 641z 431	135H+96	We reject Lamy's arguments and find his reliance on Pool misplaced as Lamar's characterization of the prosecutor's questioning of Hignash as misconduct conflicts with the trial court's finding that, although the prosecutor's question was "fairly fully framed," the prosecutor did not intentionally evade the trial court's order. This finding of fact is not clearly erroneous. See State v. Cuffie, 171 Ariz. 49, 51, 828 P.2d 773, 775 (1992) ("Appellate review of a trial court's findings of fact is limited to a determination of whether those findings are clearly erroneous.").	A prosecutor's misconduct implicates a defendant's double jeopardy rights when: (1) mistrial is granted because of improper conductor action by the prosecutor; (2) such conduct is not merely the result of legal error, negligence, mistake or insignificant inpropriety, but, taken as a whole, amounts to intentional conduct which the prosecutor knows to be improper and prejudicial, and which he pursues for an improper purpose with indifference to significant resulting danger of mistrial or reversal; and (3) the conduct causes prejudice to defendant which cannot be cured by a new trial. U.S.C.A. Const.Amend. 5, 14; A.B.S. Const. Art. 1, §§ 4, 10, 24.	When does a prosecutor's misconduct implicate a defendant's double jeopardy rights?	Double jeopardy- Memo 384 - C- MS_66578.docx	ROSS-00327904-ROSS-00327905	Condensed, SA	0.59	0	1	0	1	
237	State ex rel. City of St. Louis v. Oakley, 334 Mo. 124	148H+20	In condemnation suits under our general statutes we have consistently held that the easement in or title to private property is fully acquired by the condemnor when it pays to the owner, or into court for him, the amount of damages awarded by commissioners although the judgment does not become final and appealable until after the expiration of the time for appeal. See State ex rel. City of St. Louis v. Approved State ex rel. State Highway Com'n of Missouri, Day, 327 Mo. 122, 35 S.W.2d 37, 38, and cases cited. In the Day case we said: "The condemnor in every case, in the exercise of a discretion not subject to judicial review, makes its own appropriation of private property for public use. When it pays to the owner of the property so appropriated just compensation, the title passes by operation of law. The only function that the court performs in a condemnation proceeding is the determination of whether the property is to be taken for public use or drawn into the proceeding. It may in its judgment make pronouncement of condemnation, but, if so, its judgment in that respect is a mere empty form". To the same effect is State ex rel. Union Electric Light & Power Co. v. Bruce, 334 Mo. 312, 313, 315, 66 S.W.2d 847.	In condemnations suits under general statutes, easement in or title to private property is fully acquired by condemnor when it pays to owner, or into court for him, the amount of damages awarded by commissioners legally appointed, although judgment does not become final and appealable until all exceptions are determined and the commissioners' report finally approved.	"In the easement in or title to the property condemned fully acquired by the condemnor when it pays to the owner, or into the court for him, the amount of damages awarded by the commissioners, in condemnation suits?"	017882.docx	LEGASE-00127296- LEGASE-00127297	Condensed, SA	0.7	0	1	0	1	
238	Overman v. Rubin, 714 N.E.2d 735	366-32	Equitable subrogation is applicable when a "party, not acting as a mere volunteer, pays the debt of another which, in good conscience, should have been paid by the one primarily liable." Loving v. Fenderose Sys., Inc. (1985) 1nd, 479 N.E.2d 331, 536 (citing National Mut. Ins. Co. v. Maryland Cas. Co. (1993), 136 Ind App. 35, 41, 187 N.E.2d 575, 578, trans. denied). At that time, if equity permits, the party who has paid the creditor, or subrogee, becomes entitled to the legal rights and security originally held by the creditor. "Subrogation depends upon the equities and attending circumstances of each case." 136 Ind App. 35, 41, 187 N.E.2d 575, 578, trans. denied. (1993) 1nd App. 576 N.E.2d 1332, 1338, trans. denied. It is a highly favored doctrine, which is to be given a liberal application." 73 a mo ju 2d Subrogation " 7 [1974] (citations omitted). However, while ordinary negligence will not bar the application of subrogation, "[t]he remedy will not be allowed where the party is guilty of culpable negligence." Tcor, supra at 1338. Thus, a party who pays the debt of a noder may be substituted in place of the other if he was not acting (1) as a mere volunteer and (2) with culpable negligence.	Doctrine of "equitable subrogation" is known as legal subrogation is applicable when a party, not acting as a mere volunteer, pays the debt of another which, in good conscience, should have been paid by the one primarily liable; at that time, if equity permits, should have been paid by the one primarily liable; at that time, if equity permits, the party who has paid the creditor, or subrogee, becomes entitled to the legal rights and security originally held by the creditor.	"Equitable subrogation is applicable when a party, not acting as a mere volunteer, pays the debt of another which, in good conscience, should have been paid by the one primarily liable?"	Subrogation - Memo # 413 - C - SA.docx	ROSS-00323790-ROSS-00323792	Condensed, SA, Sub	0.57	0	1	1	1	

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239	May v. May, 214 W. Va. 394.	15921	Goodwill may be defined generally as "[t]he advantage or benefit, which is acquired by an establishment, beyond the mere value of the capital stock, funds, or property employed therein, in consequence of general public patronage and encouragement, which it receives from constant or habitual customers, on account of its local position, or common celebrity, or superior skill or skill or influence, or particularity, or from other similar considerations or necessities, or even from ancient partialities or prejudices." (McDermid v. McDermid, 649 A.2d 810, 813 (D.C.App.1994) (citations omitted)). See also Yoon v. Yoon, 711 N.E.2d 1265, 1268 (Ind.1998) (defining goodwill "as the value of a business or business practice that exceeds the combined value of the net assets used in the business"). Essentially, goodwill is "the favor which the management of a business has won from the public, and probability that old customers will continue their patronage." (Gardner v. Gardner, 659 A.2d 338, 339, 340 (D.C.App.1995) (quoting 19 U.S.C. § 3635, 3636, 3639, 3640, 3641, 3642, 3643, 3644, 3645, 3646, 3647, 3648, 3649, 3650, 3651, 3652, 3653, 3654, 3655, 3656, 3657, 3658, 3659, 3660, 3661, 3662, 3663, 3664, 3665, 3666, 3667, 3668, 3669, 3670, 3671, 3672, 3673, 3674, 3675, 3676, 3677, 3678, 3679, 3680, 3681, 3682, 3683, 3684, 3685, 3686, 3687, 3688, 3689, 3690, 3691, 3692, 3693, 3694, 3695, 3696, 3697, 3698, 3699, 3700, 3701, 3702, 3703, 3704, 3705, 3706, 3707, 3708, 3709, 3710, 3711, 3712, 3713, 3714, 3715, 3716, 3717, 3718, 3719, 3720, 3721, 3722, 3723, 3724, 3725, 3726, 3727, 3728, 3729, 3730, 3731, 3732, 3733, 3734, 3735, 3736, 3737, 3738, 3739, 3740, 3741, 3742, 3743, 3744, 3745, 3746, 3747, 3748, 3749, 3750, 3751, 3752, 3753, 3754, 3755, 3756, 3757, 3758, 3759, 3760, 3761, 3762, 3763, 3764, 3765, 3766, 3767, 3768, 3769, 3770, 3771, 3772, 3773, 3774, 3775, 3776, 3777, 3778, 3779, 3780, 3781, 3782, 3783, 3784, 3785, 3786, 3787, 3788, 3789, 3790, 3791, 3792, 3793, 3794, 3795, 3796, 3797, 3798, 3799, 3800, 3801, 3802, 3803, 3804, 3805, 3806, 3807, 3808, 3809, 3810, 3811, 3812, 3813, 3814, 3815, 3816, 3817, 3818, 3819, 3820, 3821, 3822, 3823, 3824, 3825, 3826, 3827, 3828, 3829, 3830, 3831, 3832, 3833, 3834, 3835, 3836, 3837, 3838, 3839, 3840, 3841, 3842, 3843, 3844, 3845, 3846, 3847, 3848, 3849, 3850, 3851, 3852, 3853, 3854, 3855, 3856, 3857, 3858, 3859, 3860, 3861, 3862, 3863, 3864, 3865, 3866, 3867, 3868, 3869, 3870, 3871, 3872, 3873, 3874, 3875, 3876, 3877, 3878, 3879, 3880, 3881, 3882, 3883, 3884, 3885, 3886, 3887, 3888, 3889, 3890, 3891, 3892, 3893, 3894, 3895, 3896, 3897, 3898, 3899, 3900, 3901, 3902, 3903, 3904, 3905, 3906, 3907, 3908, 3909, 3910, 3911, 3912, 3913, 3914, 3915, 3916, 3917, 3918, 3919, 3920, 3921, 3922, 3923, 3924, 3925, 3926, 3927, 3928, 3929, 3930, 3931, 3932, 3933, 3934, 3935, 3936, 3937, 3938, 3939, 3940, 3941, 3942, 3943, 3944, 3945, 3946, 3947, 3948, 3949, 3950, 3951, 3952, 3953, 3954, 3955, 3956, 3957, 3958, 3959, 3960, 3961, 3962, 3963, 3964, 3965, 3966, 3967, 3968, 3969, 3970, 3971, 3972, 3973, 3974, 3975, 3976, 3977, 3978, 3979, 3980, 3981, 3982, 3983, 3984, 3985, 3986, 3987, 3988, 3989, 3990, 3991, 3992, 3993, 3994, 3995, 3996, 3997, 3998, 3999, 4000, 4001, 4002, 4003, 4004, 4005, 4006, 4007, 4008, 4009, 4010, 4011, 4012, 4013, 4014, 4015, 4016, 4017, 4018, 4019, 4020, 4021, 4022, 4023, 4024, 4025, 4026, 4027, 4028, 4029, 4030, 4031, 4032, 4033, 4034, 4035, 4036, 4037, 4038, 4039, 4040, 4041, 4042, 4043, 4044, 4045, 4046, 4047, 4048, 4049, 4050, 4051, 4052, 4053, 4054, 4055, 4056, 4057, 4058, 4059, 4060, 4061, 4062, 4063, 4064, 4065, 4066, 4067, 4068, 4069, 4070, 4071, 4072, 4073, 4074, 4075, 4076, 4077, 4078, 4079, 4080, 4081, 4082, 4083, 4084, 4085, 4086, 4087, 4088, 4089, 4090, 4091, 4092, 4093, 4094, 4095, 4096, 4097, 4098, 4099, 4100, 4101, 4102, 4103, 4104, 4105, 4106, 4107, 4108, 4109, 4110, 4111, 4112, 4113, 4114, 4115, 4116, 4117, 4118, 4119, 4120, 4121, 4122, 4123, 4124, 4125, 4126, 4127, 4128, 4129, 4130, 4131, 4132, 4133, 4134, 4135, 4136, 4137, 4138, 4139, 4140, 4141, 4142, 4143, 4144, 4145, 4146, 4147, 4148, 4149, 4150, 4151, 4152, 4153, 4154, 4155, 4156, 4157, 4158, 4159, 4160, 4161, 4162, 4163, 4164, 4165, 4166, 4167, 4168, 4169, 4170, 4171, 4172, 4173, 4174, 4175, 4176, 4177, 4178, 4179, 4180, 4181, 4182, 4183, 4184, 4185, 4186, 4187, 4188, 4189, 4190, 4191, 4192, 4193, 4194, 4195, 4196, 4197, 4198, 4199, 4200, 4201, 4202, 4203, 4204, 4205, 4206, 4207, 4208, 4209, 4210, 4211, 4212, 4213, 4214, 4215, 4216, 4217, 4218, 4219, 4220, 4221, 4222, 4223, 4224, 4225, 4226, 4227, 4228, 4229, 4230, 4231, 4232, 4233, 4234, 4235, 4236, 4237, 4238, 423											

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ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences	
246	Rossman v. Morasco, 115 Conn. App. 234	307A-3	We first set forth our standard of review. "[T]he motion in limine" "has generally been used in Connecticut courts to invoke a trial judge's inherent discretionary powers to control proceedings, exclude evidence, and prevent occurrences that might unfairly prejudice the right of any party to a fair trial. The trial court's ruling on evidentiary matters will be overturned only upon a showing of a clear abuse of the court's discretion. The trial court's ruling, and whether it is a manifest abuse of discretion, [T]hus, our review of such rulings is limited to the questions of whether the trial court correctly applied the law and reasonably could have reached the conclusion that it did." [Internal quotation marks omitted.] Connecticut Light & Power Co. v. Gilmore, 285 Conn. 88, 128, 956 A.2d 1145 (2008). In this case, however, the plaintiffs' motion in limine sought to preclude evidence on the basis of the statute of limitations. "Whether a party's claim is barred by the statute of limitations is a question of law that the appellate court reviews de novo." Whelan v. Mahoney, 344 Conn. 84, 50 Conn. App. 593, 605, 894 A.2d 335 (2008), aff'd, 284 Conn. 393, 931 A.2d 616 (2007). Thus, our review of the court's application of the statute of limitations is plenary.	The motion in limine has generally been used in Connecticut courts to invoke a trial judge's inherent discretionary powers to control proceedings, exclude evidence, and prevent occurrences that might unnecessarily prejudice the right of any party to a fair trial.	Has the motion in limine generally been used in courts to involve a trial judge's inherent discretionary powers to prevent occurrences that might unnecessarily prejudice the right of any party to a fair trial?	Pretorial Procedure - Memo #620 - C - 538.docx	ROSS-003232111-ROSS-003322113	Condensed, SA	0.8	839	15,344	0	1	21,876	9,029
	247	Titmus v. Superior Court, 87 Cal. App. 4th 718	307A-1	In the absence of a clear legislative directive for or against oral hearings, we examine the applicable statutory language and consider the context. The statute provides that the court may, in its discretion, conduct oral proceedings, read as a whole, encompasses an oral hearing. (2) Do the proceedings involve critical pratical matters of considerable significance to the parties? and (3) Does the motion or other pretrial proceeding involve a real and genuine dispute? (See discussion in TIX, supra, 87 Cal.App.4th at pp. 750-753., 104 Cal.Rptr.2d 810.)	In the absence of a clear legislative directive for or against oral hearings, the court examines the applicable statutory language and considers the context. The statute provides that the court may, in its discretion, conduct oral proceedings, read as a whole, encompasses an oral hearing. (2) whether the proceedings involve critical pratical matters of considerable significance to the parties; and (3) whether the motion or other pretrial proceeding involves a real and genuine dispute.	What are the factors looked into by the court in the absence of a clear legislative directive for or against oral hearings on a pretrial motion?	Pretorial Procedure - Memo #512 - C - 512.docx	ROSS-003311704-ROSS-003311705	SA, Sub	0.08	0	0	1	1	1
248	Fed. Land bank of the United States v. Brown, 139 Va. 394	366-27	Subrogation has been generally classified as being either legal or equitable in nature. The creditor, in order to obtain subrogation, must have a liability, or right, or fiduciary relation to the premises pays a debt due by another under such circumstances that he is in equity entitled to the security or obligation held by the creditor whom he has paid. Conventional subrogation, on the other hand, arises where by express or implied agreement with the debtor, a person advancing money to discharge a prior lien might be substituted to the security of the prior lien. The progressive extension of both types of subrogation has somewhat obliterated this line of division. See 10 A.L.R. 1396, 1397.	"Subrogation" is generally classified as being either legal or conventional in nature. The creditor, in order to obtain subrogation, must have a liability, or right, or a fiduciary relation to the premises pays a debt due by another under such circumstances that he is in equity entitled to the security or obligation held by the creditor whom he has paid, and "conventional subrogation" arising where by express or implied agreement with the debtor, a person advancing money to discharge a prior lien might be substituted to the security of the prior lien.	How is subrogation classified under the law?	Subrogation - Memo 2003 - C Cal.docx	ROSS-003296682-ROSS-003296804	Condensed, SA	0.19	0	1	0	1	1	
249	Dow Jones & Co. v. Harolds, Ltd., 237 F. Supp. 2d 394.	1066-132	The state's exercise of jurisdiction to adjudicate, as an adjunct of the power to prescribe governing law, generally derives from the relationship of the state to the particular person or thing that is the subject of the litigation, including the defendant's presence, conduct, or ownership of property within the state, or conduct occurring outside the state's territorial boundaries but producing certain kinds of injury within the state. Based on these predicates, the United Kingdom may have jurisdiction to protect its residents from the harmful effects of an alleged defamation action arising within its boundaries. At the same time, the United States has a profound interest in fostering its broad concept of First Amendment freedoms, and safeguarding the freest exercise of those fundamental rights within the United States by all persons accorded the protection of American law.	Does a state's exercise of jurisdiction to adjudicate derive from the relationship of a state to a particular person or thing that is the subject of litigation?	Does a state's exercise of jurisdiction to adjudicate derive from the relationship of a state to a particular person or thing that is the subject of litigation?	005078.docx	LEGALCASE-00125942-LEGALCASE-00125943	Condensed, SA	0.59	0	1	0	1	1	
	250	Manufactured Home Communities of Wash. v. State, 90 Wash. App. 257	1486-1.1	An owner of property subject to a regulation that constitutes a physical invasion or total taking is entitled to relief regardless of the public interest reasons supporting the regulation unless the State provides rebuttal evidence showing that the use violates nuisance or property laws. Guimont, 121 Wash.2d at 598, 854 P.2d 41; Lucas v. South Carolina Coastal Council, 505 U.S. 1009, 1107 F.2d 2886, 2894*95, 120 L.Ed2d 4798 (1992). The State describes the right at issue as a right of first refusal, which is not a fundamental property right in the state of Washington. Washington no interest in land is created by a right of first refusal. 95 Wash.2d 66, 607*1, 622 P.2d 367 (1980). Felder v. Felder, 40 Wash.App. 589, 593, 699 P.2d 801 (1985). In Robroy Land Co., at 71, 622 P.2d 367, the court stated: "We reject the view that a preemptive contract... creates an interest in land at the time of its inception." A preemptor acquires no present right to affect the property, but holds only a general contract right to acquire a later interest should the property owner decide to sell. In that event, a new contract ensues under which the preemptor acquires an interest in land. Robroy Land Co., at 622 P.2d 367, 607*1, 622 P.2d 367 (1980). See also, 95 Wash.2d 973, 980, 640 P.2d 10 (1983); Bennett v. Bennett Factors, Inc. v. Bennett, 73 Wash.2d 849, 853*54, 441 P.2d 126 (1968); Felder, 40 Wash.App. at 533, 699 P.2d 801; Old Nat'l Bank v. Arneson, 54 Wash. App. 717, 721*22, 776 P.2d 145 (1989).	Owner of property subject to a regulation that constitutes physical invasion or total taking is entitled to relief regardless of the public interest reasons supporting regulation, unless state provides rebuttal evidence showing that the use violates nuisance or property laws. U.S.C.A. Const. Amend. 5; West's RCWA Const. Art. 1, § 6.	Is an owner of property subject to a regulation that constitutes a taking entitled to relief if this State fails to provide rebuttal evidence showing that the use violates nuisance or property laws?	LEGALCASE-00126318-LEGALCASE-00126339	Condensed, SA, Sub	0.79	0	1	1	1	1	

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251	Starratt Co., A Div. of, et al. v. Bangor Punta Operations v. C.J. Heck Co. of Texas, 748 F.2d 982	366-4	In this diversity action, we are called upon to decide whether a drawee bank who has missed the midnight deadline, and is therefore accountable to the payee for the amount of the item under Tex. Bus. & Com. Code Ann. [U.C.C.] § 4.302(1), is liable to the payee when (1) the drawee bank, as a result of an unexplained judgment, has a right of charge back against the maker; and (2) the maker had previously discharged the underlying debt pursuant to mutual release with payee, but resulting circularity of obligations had effect of extinguishing payee's statutory claim against the drawee. V.T.C.A., Bus. & C. § 4.302(1).	Under Texas law, drawee bank which missed the midnight deadline and was held strictly accountable to payee for amount of check was statutorily liable to payee, but the bank, which had been awarded judgment against maker pursuant to its right of charge back, was equitably subrogated to insolvent maker's right to restitution against payee as maker had previously discharged the underlying debt pursuant to mutual release with payee, but resulting circularity of obligations had effect of extinguishing payee's statutory claim against the drawee. V.T.C.A., Bus. & C. § 4.302(1).	Is a drawee bank which missed the midnight deadline held strictly accountable to payee for amount of check under the law?	Subrogation - Memo # 897 - C - SA.docx	LEGALCASE-00016679-LEGALCASE-00016800	Condensed, SA, Sub 0.37	0	839	15,344	14,873	21,876	9,029	
252	City of Charleston v. Pub. Serv. Comm'n of W. Virginia, 57 F.3d 385	317A-114	In a somewhat similar case, the West Virginia Supreme Court of Appeals, after examining the city's charter, rejected the city's contention that rate increases ordered by the PSC impaired "binding contracts" between the city and the private water company "regulating" the water company's "charges or activities" in violation of the Contract Clause because no "portion of the charter clearly [it] granted[ed]... [the city] authority" to enter into such "binding contracts." City of Charleston, 103 S.E. at 674-75 (citations omitted). The court explained "[T]he authority of the municipality so to restrict and limit the power of the state 'must clearly and unmistakably appear, and all doubts must be resolved in favor of the continuance of the power.' The intent to confer upon a municipality the power to make an irrevocable contract of this nature cannot be implied. It is to be ascertained from the express language of the charter." see also City of Benwood, 83 S.E. at 237-38. Moreover, under West Virginia law [all] contracts made by a utility relating to the public service must be deemed to be entered into in contemplation of the exercise by the state of its regulatory power whenever the public interest may make it necessary... although an otherwise valid contract is binding on the parties to it until a departure from such contract has been directed by competent authority. Preston County Light & Power Co. v. Renick, 145 W.Va. 115, 113 S.E.2d 378, 387 (1960); see also United Fuel Gas Co. v. Battle, 153 W.Va. 222, 187 S.E.2d 890, 904, cert. denied, 396 U.S. 116, 90 S.Ct. 398, 24 L.Ed.2d 309 (1969).	Under West Virginia law, all contracts made by utility relating to public service must be deemed to be entered into in contemplation of exercise by state of its regulatory power whenever the public interest may make it necessary, although otherwise valid contract is binding on parties to it until departure from such contract has been directed by competent authority.	Are all contracts made by public utilities relating to public service deemed to be entered into with the exercise by the state of its regulatory powers?	042535.docx	LEGALCASE-00129402-LEGALCASE-00129404	Condensed, SA	0.76	0	1	0	1	1	1
253	Galimov v. Akto, 514 F.2d 949	41-3-1	The issue raised by the alleged conflict between the statutory exclusive remedy provisions embodied in most workers' compensation laws and the Federal Employers' Liability Act (FELA) for certain federal employees is an identification of the proper law to apply to a claim for contribution or indemnification in personal injury actions is neither new nor limited to the federal sphere. See, e.g., Westchester Lighting Co. v. Westchester County Small Estates Corp., 278 N.Y. 175, 15 N.E.2d 567 (1938). It presents what one author has called "[p]erhaps the most evenly balanced controversy in all of workers' compensation law." Larson, Workers' Compensation: Third Party's Action Over Against Employer, 65 Nw.U.L.Rev. 351 (1970). On the one hand, workers' compensation laws are designed to assure employees that they will receive disability and medical benefits in case of injury. In return, the employer is assured of a fixed liability which is predictable enough so that he may insure against his probable costs. Litigation is avoided, further lowering the price of accidents to the parties and to society. On the other hand, policies underlying doctrines of contribution or tort indemnification are designed to allocate the costs of negligence equitably among joint tortfeasors or to the party primarily responsible. When an employee covered by workers' compensation acts in negligence a third party who then impleads the employer, there is no way fully to satisfy all policies coming into play.	Workers' compensation laws are designed to assure employees that they will receive disability and medical benefits in case of injury; in return, the employer is assured of a fixed liability which is predictable enough so that he may insure against his probable costs.	"Are the workers compensation laws designed to assure employees that they will receive disability and medical benefits in the case of an injury, and in return, employers are assured of a fixed liability which is predictable enough so that he may insure against his protectable costs?"	047814.docx	LEGALCASE-00130122-LEGALCASE-00130123	Condensed, SA	0.81	0	1	0	1	1	1
254	Smith v. Arkansas Dept. of Human Servs., 395 Ark. 395	307A-718	With regard to the adverse ruling which occurred at the termination hearing, a trial court shall grant a motion for continuance only upon a showing of good cause and only for so long as is necessary. Green v. Hix, 354 Ark. 210, 118 S.W.3d 260 (2003). The law is well established that the granting or denial of a motion for continuance is within the sound discretion of the trial court, and that courts' decision will not be reversed absent an abuse of discretion amounting to a denial of justice. Id. When deciding whether a continuance should be granted, the trial court should consider the following factors (1) the diligence of the movant; (2) the probable effect of the testimony at trial; (3) the likelihood of procuring the witness's attendance in the event of postponement; (4) the filing of an affidavit, stating not only what facts the witness would testify to, but also that the appellant believes them to be true. Id. Additionally, the appellant must show prejudice from the denial of a motion for continuance. Id.	When deciding whether a continuance should be granted, the trial court should consider the following factors: (1) the diligence of the movant; (2) the probable effect of the testimony at trial; (3) the likelihood of procuring the witness's attendance in the event of postponement; (4) the filing of an affidavit, stating not only what facts the witness would prove, but also that the appellant believes them to be true.	"When deciding whether a continuance should be granted, the trial court should consider the following factors: (1) the diligence of the movant; (2) the probable effect of the testimony at trial; (3) the likelihood of procuring the witness's attendance in the event of postponement; (4) the filing of an affidavit, stating not only what facts the witness would prove, but also that the appellant believes them to be true."	027003.docx	LEGALCASE-00131282-LEGALCASE-00131283	Condensed, SA	0.59	0	1	0	1	1	1
255	Rocales v. Peetress Welder, 311 Minn. 6	41-3-1	Examination of the statute clearly indicates that the 1974 amendment was a legislative response to our decision in Pranchette v. Windom Hospital, 297 Minn. 212, 211 N.W.2d 385 (1973), where we held that an employee receiving temporary total disability benefits should not be entitled to receive concurrently a lump-sum payment of permanent partial disability benefits. We find no legislative intent to address the problem raised in Umbreit v. Quality Tool, Inc. supra, and this case. The workers' compensation law is a substituted remedy created by the legislature and absent a reasonably clear indication of legislative action modifying rights created by the act, this court must proceed cautiously in attempting to infer legislative intent. The problem presented by the facts of this case should be addressed to the legislature.	Workers' Compensation Law is a substituted remedy created by legislature and, absent a reasonably clear indication of legislative action modifying rights created by the law, the Supreme Court must proceed cautiously in attempting to infer legislative intent. M.S.A. § 176.021, subd. 3.	"Is the Workers' Compensation law a substituted remedy created by the legislature, and absent a reasonably clear indication of legislative action modifying rights created by the law, should the Supreme Court proceed in attempting to infer legislative intent?"	047798.docx	LEGALCASE-00131686-LEGALCASE-00131688	Condensed, SA, Sub 0.66	0	1	1	1	1	1	1

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260	Tevakolian v. Agio Corp., 304 Ga.App. 660	307A+483	Although petitioners contend that their service of a second set of requests for admission, to which A.T. did not respond, supports the grant of summary judgment, we disagree. Under OCGA §9-1-36, the ultimate sanction denying a matter admitted is available when a party completely fails to respond after the requesting party has moved to determine the sufficiency of its answer and the trial court finds the answer fails to comply with statutory requirements. OCGA §9-1-36.	The ultimate sanction for failing to respond to requests for admissions, deeming a matter admitted, is available when a party completely fails to respond or after the requesting party has moved to determine the sufficiency of its answer and the trial court finds the answer fails to comply with statutory requirements. West's G.O.Ann. S.9-1-36.	Is the ultimate sanction of deeming a matter admitted available when a party completely fails to respond or after the requesting party has moved to determine the sufficiency of its answer and the trial court finds the answer fails to comply with statutory requirements?	Pretrial Procedure - Memo #3661 - C - NE.docx	R05S-00304001-R05S-00304002	SA_Sub	0.62	839 0	15,344 0	14,873	21,876	9,029
261	Heath v. Color Imprints USA, 329 Ga.App. 605	307A+486	Under OCGA §9-11-36(a)(2), requests for admissions are deemed admitted if a party fails to respond within 30 days. See GH. Buss & Co., Fulton County Bd. of Tax Assessors, 327 Ga.App. 332(1), 486 S.E.2d 810 (1997). However, the trial court has discretion to permit a party to withdraw admissions if the court is satisfied "1) that withdrawal of the admissions would be in the interests of justice, and 2) that there is no satisfactory showing that withdrawal will prejudice the party who obtained the admissions." [Citation omitted]. Porter v. Urban Residential Dev. Corp., 294 Ga.App. 828, 829(1), 670 S.E.2d 464 (2008). The party seeking to withdraw the admissions has the burden of establishing the first prong by showing that the admitted request either can be refuted by admissible evidence having a medium of credibility or is incredible on its face, and the denial is not offered solely for purposes of delay or to avoid discovery obligations. If the first prong is established, the burden is on the party opposing withdrawal to show that he would be prejudiced by the withdrawal. West's G.O.Code Ann. S.9-11-36(a)(2).	The party seeking to withdraw deemed admissions has the burden of establishing that withdrawal of the admissions will subserve or advance presentation of the merits by showing that the admitted request either can be refuted by admissible evidence having a medium of credibility or is incredible on its face, and the denial is not offered solely for purposes of delay or to avoid discovery obligations. This burden is on the party opposing withdrawal to show that he would be prejudiced by the withdrawal. West's G.O.Code Ann. S.9-11-36(a)(2).	"Does a party seeking to withdraw deemed admissions have the burden of establishing that that the admitted request either can be refuted by admissible evidence having a medium of credibility or is incredible on its face, and the denial is not offered solely for purposes of delay?"	Pretrial Procedure - Memo #4106 - C - RI.docx	R05S-00303443-R05S-00303445	Condensed_SA_Sub	0.59	0	1	1	1	1
262	Thurmond v. Superior Court of City & Cty. of San Francisco, 66 Cal. 2d 836	307A+716	Among the factors to be considered by the court will be the nature and urgency of the rights involved (see Oil Workers' International Union CO v. Superior Court [1953] 103 Cal.App.2d512, 584, 230 P.2d 714[5]), whether the party seeking delay has or can secure other counsel to represent him for the particular step in the proceedings then before the court, and whether the attorney who is a member of the Legislature was employed by the party during the period in question. In re Estate of Vandenboom, 1997 WL 82 Cal.App. 764, 768, 776, 256 P.2d 222, People v. Goldenson (1888) 76 Cal. 318, 341 *342, 19 P. 361, Mann v. Pacific Greyhound Lines (1949) 93 Cal.App.2d 439, 446, 207 P.2d 105, and cases there cited, 2 Wilkin Cal.Procedure, Trial, pp. 1746-1751.) The legislative policy of granting continuances of court proceedings so as not to interfere unduly with the functions of the legislature, reflected in section 95, has been in the law since 1880 and should be given full force and effect in granting the continuance construed the statute as being mandatory and therefore did not exercise any discretion in the matter. Neither did it inquire into any of the above-mentioned considerations nor did it afford the guardian or the mother of the unborn child an opportunity to be heard.	Legislative policy of granting continuances of court proceedings so as not to interfere unduly with functions of the Legislature should be given full force and effect wherever and whenever it may be done without unduly adversely affecting the rights of others. West's Ann.Code Civ.Proc. S.95.	Should the legislative policy of granting continuances of the proceedings so as not to interfere unduly with functions of the Legislature be given full force and effect without unduly adversely affecting the rights of others?	029850.docx	LEGALCASE-00136824-LEGALCASE-00136826	Condensed_SA_Sub	0.79	0	1	1	1	1
263	Hern v. Sandell, \$89 So. 2d 1334	307A+86.1	Statute which requires factual showing before claim for punitive damages are allowed in civil actions creates positive legal right in party not to be subjected to financial worth discovery until trial court has first made affirmative finding that there is reasonable evidentiary basis for punitive damages claim to go to jury. Turning to the critical issue, we read section 768.72 as creating a positive legal right in a party not to be subjected to financial worth discovery until the trial court has first made an affirmative finding that there is reasonable evidentiary basis for the punitive damages claim to go to the jury. That finding necessarily includes a legal determination that the kind of claim in suit is one which allows for punitive damages under our law. Thus, to that extent, the legal sufficiency of the punitive damage pleading is also in issue in the section 768.72 setting. Because the supreme court itself has held that section 768.72 creates substantive legal rights and that its procedures are intimately tied to those substantive rights, see Smith v. Department of Insurance, 507 So.2d 1092 n. 1d (Fla.1987), we find it difficult to understand how North's position can carry larger control of this issue.	Statute which requires factual showing before claim for punitive damages are allowed in civil actions creates positive legal right in party not to be subjected to financial worth discovery until trial court has first made affirmative finding that there is reasonable evidentiary basis for punitive damages claim to go to jury? Turning to the critical issue, we read section 768.72 as creating a positive legal right in a party not to be subjected to financial worth discovery until the trial court has first made an affirmative finding that there is reasonable evidentiary basis for punitive damages claim to go to jury?	Does a statute which requires a factual showing before a claim for punitive damages are allowed in civil actions create a positive legal right?	Pretial Procedure - Memo # 5074 - C - TM.docx	R05S-00329179S-R05S-003291796	Condensed_SA_Sub	0.72	0	1	1	1	1
264	Bank of Am. Sec. LLC v. Evergreen Int'l Aviation, 169 N.C. App. 690	307A+554	In the first category of motions, when neither party submits evidence, "The allegations of the complaint must disclose jurisdiction although the particulars of jurisdiction need not be alleged." Baggett v. Medford Park Dist. Board of Education, 353 N.C. 261, 266 S.E.2d 601 (1980). The trial judge must decide whether the complaint contains allegations that, if taken as true, set forth a sufficient basis for the court's exercise of personal jurisdiction. Inspirational Network, Inc. v. Combs, 131 N.C.App. 231, 235, 506 S.E.2d 754, 758 (1998).	In a motion to dismiss for lack of personal jurisdiction, when neither party submits evidence, the allegations of the complaint must disclose jurisdiction through the particulars of jurisdiction need not be alleged, although the particulars of jurisdiction need not be alleged, if taken as true, set forth a sufficient basis for the court's exercise of personal jurisdiction. Rules Civ.Proc., Rule 12(b)(2); West's N.C.G.S.A.S.1A-1.	"When neither party submits evidence in support or opposition of a motion to dismiss for lack of personal jurisdiction, must the allegations of the complaint disclose jurisdiction although the particulars of jurisdiction need not be alleged?"	032813.docx	LEGALCASE-00139800-LEGALCASE-00139801	Condensed_SA_Sub	0.27	0	1	1	1	1

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265	Nague v. Town of E. Haven Bd. of Police Comm'n, 2014 WL 647699	307A-679	When a trial court decides a jurisdictional question raised by a pretrial motion to dismiss on the basis of the complaint alone, it must consider the allegations of the complaint in their most favorable light.... In this regard, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader.	When a trial court decides a jurisdictional question raised by a pretrial motion to dismiss on the basis of the complaint alone, it must consider the allegations of the complaint in their most favorable light, and in this regard, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader.	"When a trial court decides a jurisdictional question raised by a pretrial motion to dismiss on the basis of the complaint alone, it must consider the allegations of the complaint in their most favorable light, and in this regard, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader?"	032880.docx	LEGALASE-00140070-LEGALASE-00140071	Condensed, SA	0	839	15,344	14,873	21,876	9,029
266	Patterson v. Jones, 212 S.W.3d 541	307A-554	A motion to dismiss based on a lack of subject matter jurisdiction is functionally equivalent to a plea to the jurisdiction challenging the trial court's authority to determine the subject matter of a cause of action. Lacy v. Bussert, 123 S.W.3d 115, 122 (Tex.App.-Houston [14th Dist.] 2004, no pet.) (discussing dismissal based on ecclesiastical doctrine) (citing Band Indep. Sch. Dist. v. Blue, 34 S.W.3d 547, 554 (Tex.2000)). We review the record de novo to determine whether the trial court had subject matter jurisdiction. Mayhew v. Town of Sunnyvale, 964 S.W.2d 922, 928 (Tex.1998). We consider only the evidence pertinent to the jurisdictional inquiry and do not weigh the merits. County of Cameron v. Brown, 80 S.W.3d 549, 555 (Tex.2002). Also, we construe the pleadings in favor of the plaintiff, accepting all its allegations as true. Bland Indep. Sch. Dist. v. Blue, 34 S.W.3d at 555. To prevail, the defense must show that, even accepting all of the facts most favorable to the pleader, the trial court lacks subject matter jurisdiction. Brennan Hous. Auth. v. Davies, 158 S.W.3d 53, 56 (Tex.App.-Houston [14th Dist.] 2005, no pet.).	To prevail on a motion to dismiss for lack of subject matter jurisdiction, the defense must show that, even accepting all of the plaintiff's allegations as true, an incurable jurisdictional defect remains on the face of the pleadings that deprives the trial court of subject matter jurisdiction.	"To prevail on a motion to dismiss for lack of subject matter jurisdiction, the defense must show that, even accepting all of the plaintiff's allegations as true, an incurable jurisdictional defect remains on the face of the pleadings that deprives the trial court of subject matter jurisdiction?"	033853.docx	LEGALASE-00140974-LEGALASE-00140975	Condensed, SA	0.76	0	1	0	1	1
267	Hageman v. Illinois Workers Comp. Comm'n, 399 Ill. App. 3d 197	307A-560	There is no specific time limitation in rule allowing dismissal of action based on plaintiff's failure to exercise due diligence to obtain service on defendant; rather, trial court must consider passage of time in relation to all other facts and circumstances of each case individually. Sup. Ct. Rules, Rule 103(b).	There is no specific time limitation in rule allowing dismissal of action based on plaintiff's failure to exercise due diligence to obtain service on defendant; rather, trial court must consider passage of time in relation to all other facts and circumstances of each case individually. Sup. Ct. Rules, Rule 103(b).	Is there no specific time limitation in the rule allowing dismissal of action based on a plaintiff's failure to exercise due diligence to obtain service on a defendant?	Perital Procedure - Memo #6245 - C-TM.docx	ROSS-00288253-ROSS-00288254	Condensed, SA, Sub	0.61	0	1	1	1	1
268	Aeroflex Wichita v. Filardo, 294 Kan. 258	307A-554	Hence, we reject T.C.'s arguments and conclude that, even though there was discovery, when a defendant's K.S.A. 2011 Supp. 67-1210(d) motion to dismiss for lack of personal jurisdiction is decided before trial on the basis of the pleadings, affidavits, and other written materials without an evidentiary hearing, any factual disputes must be resolved in the plaintiff's favor and the plaintiff need only make a prima facie showing of jurisdiction. Rules Civ. Proc. K.S.A. 60-1210(b).	When a defendant's motion to dismiss for lack of personal jurisdiction is decided before trial on the basis of the pleadings, affidavits, and other written materials without an evidentiary hearing, any factual disputes must be resolved in the plaintiff's favor and the plaintiff need only make a prima facie showing of jurisdiction. Rules Civ. Proc. K.S.A. 60-1210(b).	"When a defendant's motion to dismiss for lack of personal jurisdiction is decided before trial on the basis of the pleadings, should any factual disputes be resolved in the plaintiff's favor?"	Perital Procedure - Memo #6786 - C-VA.docx	ROSS-00288818-ROSS-00288819	Condensed, SA	0.18	0	1	0	1	1
269	In re Risk Level Determination of JV, 741 N.W.2d 612	307A-552	Relator next argues that even if his request for administrative review is moot, the determination is capable of repetition and likely to evade review. Generally, a case should not be dismissed on the ground of mootness if it implicates issues that are capable of repetition, yet evading review. This only applies to the situation where two elements are combined: (1) the challenged action was in its nature too fleeting to be fully adjudicated by the court on its merits, and (2) the same problem is likely to recur. The same complaining party would be subjected to the same action again.	Generally, a case should not be dismissed on the ground of mootness if it implicates issues that are capable of repetition, yet evading review; but absent certification as a class action, this only applies to the situation where two elements are combined: (1) the challenged action was in its nature too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again.	Should a case be dismissed on the ground of mootness if it implicates issues that are capable of repetition?	034076.docx	LEGALASE-00145222-LEGALASE-00145223	Condensed, SA	0.36	0	1	0	1	1
270	Peterson v. McGawley, 135 Idaho 282	307A-746	In finding sanctions, a trial court should "balance the equities by comparing the capability of the disobedient party with the resulting prejudice to the innocent party." See, 129 Idaho at 668, 931 P.2d at 662 (quoting Astorquia, 113 Idaho at 532, 746 P.2d at 931 (Donaldson, J., concurring)). Before ordering the most drastic sanction-the dismissal of an action or entry of judgment against a litigant-the trial court must first consider lesser sanctions and make specific findings that less severe sanctions would be inadequate. Astorquia, 113 Idaho at 531, 746 P.2d at 662. The trial court must also consider the reasons why the party has established certain factors that a trial court must consider before imposing the most severe sanctions: "The two primary factors are a clear record of delay and ineffective lesser sanctions, which must be bolstered by the presence of at least one "aggravating" factor, including: 1) delay resulting from intentional conduct, 2) delay caused by the plaintiff personally, or 3) delay causing prejudice to the defendant." Ashby, 117 Idaho at 886-87, 791 P.2d at 436-37 (citations omitted). The trial court's consideration of these factors "must appear in the record in order to facilitate appellate review." Id. at 687, 791 P.2d at 437.	Before ordering the most drastic sanction-the dismissal of an action or entry of judgment against a litigant-the trial court must first consider lesser sanctions and make specific findings that less severe sanctions would be inadequate. Rules Civ. Proc., Rule 16(f).	"Before ordering the most drastic sanction-the dismissal of an action or entry of judgment against a litigant, must the trial court first consider lesser sanctions and make specific findings that less severe sanctions would be inadequate?"	034653.docx	LEGALASE-00145496-LEGALASE-00145497	SA, Sub	0.79	0	0	1	1	1
271	Tomlinson McKenzie v. Prince, 718 So. 2d 394	307A-746	A trial judge has broad discretion in determining whether to admit the testimony of a witness or permit introduction of an exhibit not disclosed pursuant to a pretrial order. See Binger v. King Pest Control, 401 So.2d 1310, 1313 (Fla. 1981). However, the trial judge's discretion should be guided primarily by whether the "objecting party" would be prejudiced by the admission of the evidence. Id. at 1314. While we cannot understand why appellants failed to seek leave of court to file an amended witness statement, we do not find fault with the trial court's decision to grant the trial in February of 1998, that factor alone does not justify exclusion of the evidence.	In determining whether to admit the testimony of a witness or permit introduction of an exhibit not disclosed pursuant to a pretrial order, the trial court's discretion should be guided primarily by whether the objecting party would be prejudiced by the admission of the evidence.	"In determining whether to admit the testimony of a witness or permit introduction of an exhibit not disclosed pursuant to a pretrial order, should a trial court's discretion be guided primarily by whether the objecting party would be prejudiced?"	034651.docx	LEGALASE-00145066-LEGALASE-00145067	Condensed, SA, Sub	0.59	0	1	1	1	1

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272	Rockdale Mgmt. Co. v. Shawmut Bank, N.A., 118 F.3d 296	307A+563	When a fraud on the court is shown through clear and convincing evidence to have been committed in an ongoing case, trial judge has the power and authority to take such action as is warranted by the facts of the case. The judge has broad discretion to fashion a judicial response warranted by the fraudulent conduct. Dismissal of claims or of an entire action may be warranted by the fraud, see, e.g., Aquilo, supra at 1118, as may be the entry of a default judgment, see, e.g., Lipies v. Snowden, 656 F.Supp 1267, 1279 (E.D.N.Y.1986). We examine judicial responses to findings of fraud on the court for an abuse of discretion.	When fraud on court is shown through clear and convincing evidence to have been committed in an ongoing case, does a trial judge have the power and authority to take such action as is warranted by the facts of the case? Dismissal of claims or entire action, or entry of default judgment, may be warranted by fraud.	"When fraud on court is shown through clear and convincing evidence to have been committed in an ongoing case, does a trial judge have the power and authority to take such action as is warranted by the facts of the case? Dismissal of claims or entire action, or entry of default judgment, may be warranted by fraud?"	058956.docx	LEGALSE-00146796- LEGALSE-00146800	Condensed SA, Sub	0.49	839 0	15,344 1	14,873 1	21,876 1	9,079 1
273	Lake Meredith Reservoir Co. v. Anita Mut. Ins. Co., 698 P.2d 1340	307A+581	Whether a plaintiff has resumed prosecution after a lengthy delay should be an important factor in the trial court's consideration of a motion to dismiss for failure to prosecute. Nevertheless, a unilateral resumption of prosecution should not insulate a plaintiff from dismissal for lack of prosecution as a matter of law and in all circumstances. The trial court should also consider a number of other relevant factors in the exercise of its discretion: e.g., the length of delay, the reasons for the delay, the prejudice to the defendant by allowing the matter to remain in the court, the difficulty of the case, the nature and extent of the plaintiff's renewed efforts when balancing the policy favoring prevention of unreasonable delay in litigation against the policy favoring resolution of disputes on the merits.	In considering motion to dismiss for failure to prosecute, trial court should consider number of relevant factors in exercise of its discretion when balancing policy favoring prevention of unreasonable delay in litigation against policy favoring resolution of disputes on merits, such as length of delay, reasons for delay, prejudice that will result to defendant by allowing matter to continue, difficulties in trying case as a result of delay, and nature and extent of plaintiff's renewed efforts. Rules Civ.Proc., Rule 41(B)(1, 2).	What factors are considered in balancing the policy favoring unreasonable delay?	095330.docx	LEGALSE-00150403- LEGALSE-00150431	Condensed SA, Sub	0.38	0 1	1 1	1 1	1 1	1 1
274	Leggery Acad. for Leaders v. Mt. Calvary Pentecostal Church, 359 N.E.2d 175	307A+422	"Civ.R. 12(B)(6) motions, however, merely ascertain whether the complaint alleges the elements of the claim with sufficient particularity to permit the court to determine whether the claim is cognizable. It does not generally follow notice rather than fast pleading." In re Election Contest of Demore rate Primary Held May 4, 1999 for Clerk, Youngstown Mun. Court, 87 Ohio S13d 118, 120, 717 N.E.2d 701 (1999). Plaintiffs need not prove their case at the pleading stage. Ferron v. Dish Network, LLC, 195 Ohio App.3d 486, 2011-Ohio-5235, 961 N.E.2d 705, 23 (10th Dist.), citing York v. Ohio State Hwy. Patrol, 60 Ohio St.3d 143, 145, 573 N.E.2d 1083 (1991). Notice pleading requires only that a claim conceivably exist, and that the plaintiff has stated the elements of the claim and the nature of the action. Montgomery v. Ohio State Univ., 108b Dist. No. 11AP11024, 2012-Ohio-5489, 2012 WL 5949038, 20.	Motions to dismiss for failure to state a claim upon which relief can be granted merely ascertain whether the complaint alleges the elements of the claim with sufficient particularity to permit the court to determine whether the claim is cognizable. It does not generally follow notice rather than fast pleading. Rules Civ.Proc., Rule 12(B)(6).	Do motions to dismiss for failure under Civ.R. 12(B)(6) to state a claim upon which relief can be granted merely ascertain the elements of the claim with sufficient particularity so that reasonable notice is given to the opposing parties?	095659.docx	LEGALSE-00150574- LEGALSE-00150575	SA, Sub	0.56	0 1	0 1	1 1	1 1	1 1
275	Waldman v. Pitcher, 70 N.E.2d 1025	307A+679	A trial court ruling on a Civ.R. 12(C) motion for judgment on the pleadings must accept all material allegations in the nonmoving party's complaint as true, must construe all reasonable inferences in that party's favor, and cannot grant a dismissal if it appears beyond doubt that the nonmoving party is entitled to judgment as a matter of law. The court must accept all material allegations in the nonmoving party's complaint as true, must construe all reasonable inferences in that party's favor, and cannot grant a dismissal if it appears beyond doubt that the nonmoving party is entitled to judgment as a matter of law. Rules Civ.Proc., Rule 12(C).	A trial court ruling on a motion for judgment on the pleadings must accept all material allegations in the nonmoving party's complaint as true, must construe all reasonable inferences in that party's favor, and cannot grant a dismissal if it appears beyond doubt that the nonmoving party is entitled to judgment as a matter of law. Rules Civ.Proc., Rule 12(C).	Should a trial court ruling on a motion for judgment on the pleadings accept all material allegations in the nonmoving party's complaint as true?	037167.docx	LEGALSE-00150838- LEGALSE-00150839	Order SA	0.53	1 0	0 0	0 0	1 1	1 1
276	Lynch v. Heim Plumbing & Elec. Contractors, 108 S.W.3d 657	308A+99	Even in the absence of actual authority, an agent's acts may be binding on the principal if performed with apparent authority. Apparent authority is authority which a principal, by its acts or representations, has led third persons to believe has been conferred upon an agent. [7 S1th v. Raytown Sports Association, Inc., 961 S.W.2d 927, 932 (Mo.App.1998) (quoting Lin v. Koehnle, 909 S.W.2d 740, 745 (Mo.App.1995)]. To establish apparent authority, a third party must show that the principal manifested his consent to the exercise of such authority or knowingly permitted the agent to assume the exercise of such authority; (2) the person relying on this exercise of authority knew of the facts and, acting in good faith, had reason to believe, and actually believed, the agent possessed such authority; and (3) the person relying on the appearance of authority changed his position and will be injured or suffer loss if the transaction executed by the agent does not bind the principal." Unit, 509 S.W.3d at 66. Any reliance by the third party must be reasonable in the circumstances. See, e.g., American Insurance Placement, 887 S.W.2d 775, 783 (Mo. banc 1993).	To establish apparent authority, a party must show that: (1) the principal manifested his consent to the exercise of such authority or knowingly permitted the agent to assume the exercise of such authority; (2) the person relying on this exercise of authority knew of the facts and, acting in good faith, had reason to believe, and actually believed, the agent possessed such authority; and (3) the person relying on the appearance of authority changed his position and will be injured or suffer loss if the transaction executed by the agent does not bind the principal." Unit, 509 S.W.3d at 66. Any reliance by the third party must be reasonable in the circumstances. See, e.g., American Insurance Placement, 887 S.W.2d 775, 783 (Mo. banc 1993).	To establish apparent authority should a principal knowingly permit agent to act exercising that authority?	Principal and Agent - Memo 174 - KC_59456.docx	R055-0032M11.34055-003294114	Condensed SA	0.5	0 1	1 0	0 0	1 1	1 1
277	Cantwell v. State of Connecticut, 310 U.S. 296	129+109	The offense known as breach of the peace embraces a great variety of conduct destroying or menacing public order and tranquility. It includes not only violent acts but acts and words likely to produce violence in others. No one would have the hardihood to suggest that the principle of free speech is to be extended to a license for individuals to utter any words they please. The right of free speech is not without bounds. It does not confer the privilege to exhibit others to physical attack upon those belonging to another sect. When clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order, appears, the power of the state to prevent or punish is obvious. Equally obvious is it that a state may not unduly suppress free communication of views, religious or other, under the guise of conserving desirable conditions. Here we have a variety of conduct under a general and indefinite characterization, and leaving to the executive and judicial branches too wide a discretion in its application.	The state has power to prevent or punish when clear and present danger of riot, disorder, interference with traffic upon public streets, or other immediate threat to public safety, peace or order, appears, but state may not unduly suppress free communication of views, religious or other, under guise of conserving desirable conditions.	Whether the state has the power to prevent or punish when a clear and present danger of an immediate threat to public safety appear?	Disorderly Conduct- Memo 127- PR_50854.docx	R055-00328496-R055-003284967	Order SA	0.69	1 0	0 0	0 0	1 1	1 1

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276	Larson v. State Dept of Corr., 284 F.3d 1	228+183	In reviewing a motion to dismiss, we generally do not consider matters outside the complaint, although we may consider attachments to the complaint. When parties present additional materials outside of the pleadings in connection with a motion to dismiss, the superior court must expressly exclude the materials or convert the motion into a motion for summary judgment and allow all parties a reasonable opportunity to submit materials pertinent to such a motion. Rules Civ.Proc., Rules 12(b)(6), 56.	When parties present additional materials outside of the pleadings in connection with a motion to dismiss, the superior court must expressly include the materials or convert the motion into a motion for summary judgment and allow all parties a reasonable opportunity to submit materials pertinent to such a motion. Rules Civ.Proc., Rules 12(b)(6), 56.	"When parties present additional materials outside of the pleadings in connection with a motion to dismiss, should the superior court expressly exclude the materials or convert the motion into a motion for summary judgment and allow all parties a reasonable opportunity to submit materials?"	Pretial Procedure - Memo #9377 - C - VA_01060.docx	ROSS-00296764-R055-003286765	Order SA Sub	0.65	839	15,344	14,873	21,876	9,029
278	N. Shore Towers Apartment Inc. v. Three Towns Assoc., 104 A.13d 625	307A+679	The Supreme Court also should have denied those branches of the sponsor's motion which would be to dismiss the first, second, and fourth causes of action pursuant to CPLR 321.13(1)(7). "On a motion to dismiss the complaint pursuant to CPLR 321.13(1)(7) for failure to state a cause of action, the court is to consider the facts alleged in the complaint and accept all facts as alleged in the pleading to be true, according the plaintiff the benefit of every possible inference, and determine only whether the facts as alleged fit within any cognizable legal theory. McKinney's CPLR 321.13(1)(7).	On motion to dismiss complaint for failure to state a cause of action, court must afford pleading liberal construction, accept all facts as alleged in pleading to be true, accord plaintiff the benefit of every possible inference, and determine whether facts as alleged fit within any cognizable legal theory. McKinney's CPLR 321.13(1)(7).	LEGALCASE-00155926-003286765	034471.docx	0	1	0.51	0	1	1	1	1
279	Bryant v. Wachneer Bank & Trust Soc. of New York, 738 A.2d 839	307A+685	This. Because the law does not generally require individuals to act for the benefit of others, the legal foundation of an alleged fiduciary relationship must not suffice for identifying a fiduciary duty. In order to survive a motion to dismiss a claim for breach of fiduciary duty, the plaintiff must set forth specific facts constituting the alleged relationship with sufficient particularity to enable the court to determine whether, if true, such facts could give rise to a fiduciary relationship.	To survive a motion to dismiss a claim for breach of fiduciary duty, the plaintiff must set forth specific facts, constituting the alleged relationship with sufficient particularity to enable the court to determine whether, if true, such facts could give rise to a fiduciary relationship.	024835.docx	024835.docx	0	1	0.6	0	1	0	1	1
280	McIntire Assoc. v. Glens Falls Ins. Co., 41A D.2d 692	228+143(2)	It is motion to vacate the default and restore the case to the calendar was supported solely by its attorney's affidavit claiming law office failure. The application was not accompanied by an affidavit of merits by a person having knowledge of the facts indicating a viable cause of action. Further, there was no showing of an absence of prejudice to defendant if the case were dismissed. The court should have denied the motion under CPLR 3404. A motion to open the default and restore the case to the calendar will require the same kind of proof of merit. Lack of prejudice to the opposing party and excusable neglect as must be shown to open a default judgment. [See Marco v. Sachs, 10N.Y.2d 454-456, 226 N.Y.2d 353, 181 N.E.2d 392; CPLR 50.15(4)(1); Weinstein-Korn-Miller, New York Civil Practice, para. 3404.05, 3404.06]. The application in this case fell far short of such proof.	Once action has been deemed abandoned and automatically dismissed, a motion to open default and restore case to calendar requires same kind of proof of merit, lack of prejudice to opposing party and excusable neglect as must be shown to open a default judgment. CPLR 3404, 50.15(4) par. 1. N.Y. Ct. Rules, 5.102.4, 5.102.4.13.	039670.docx	LEGALCASE-00161146-LEGALCASE-00161147	1	1	0.64	1	0	1	1	1
281	Babakola v. HSBC Bank, USA, N.A., 324 Ga. App. 750	302+67(4)	In support of its fraud claim, Babakola asserts that Litton (rather than HSBC) was the actual successor-in-interest to Fremont, that it fraudulently transferred the property for the purpose of foreclosing on it, and that the promissory note misrepresents the amount of the loan. None of these allegations is sufficient to satisfy the requirement that fraud be pled with particularity. See OCGA, § 9-11-3(b). Where a plaintiff pleads fraud with particularity, the court should not dismiss the allegedly fraudulent acts or statements on which the fraud claim is based, however, "The proper remedy is a more definite statement, not a dismissal of the complaint or judgment on the pleadings, at least so long as the plaintiff is able and willing to amend his pleadings to conform to the statutory requirements." West's Ga. Code Ann. § 9-11-3(b).	When a plaintiff, particularly a pro se plaintiff, fails to identify specifically the allegedly fraudulent acts or statements on which his fraud claim is based, the proper remedy is a more definite statement, not a dismissal of the complaint or judgment on the pleadings, at least so long as the plaintiff is able and willing to amend his pleadings to conform to the statutory requirements. West's Ga. Code Ann. § 9-11-3(b).	MD0560.docx	LEGALCASE-001611839-LEGALCASE-001611840	0	0	0.48	0	1	1	1	1
283	CIF v. Conn., 105 N.W.3d 467	135H+96	In general, a party who moves for a mistrial may not thereafter invoke the bar of double jeopardy to prevent retrial. Thus, when the party who moves for a mistrial below seeks to prevent her retrial upon double jeopardy grounds, she must show that the conduct giving rise to the order of mistrial was precipitated by bad faith, overreaching or some other fundamentally unfair action of the prosecutor or the court. In the case sub judice, the trial court found that no prosecutorial misconduct had occurred. The discovery omission was apparently due to prosecutorial oversight. The court's ruling was not an abuse of discretion. See, e.g., Daft, Guiterrez. The trial court found that no fundamental unfairness resulted from the retrial of the case. From our review of the record, we are unable to say that the trial court's factual determinations were clearly erroneous or that its ruling constituted an abuse of discretion. Therefore, we affirm the trial court's ruling that CIF's retrial was not barred on double jeopardy grounds.	In general, a party who moves for a mistrial may not thereafter invoke the bar of double jeopardy to prevent retrial, when the party who moved for a mistrial below seeks to prevent her retrial upon double jeopardy grounds, she must show that the conduct giving rise to the order of mistrial was precipitated by bad faith, overreaching or some other fundamentally unfair action of the prosecutor or the court. U.S.C.A. Const.Amend. 5, Const. 5.13.	013239.docx	LEGALCASE-001631029-LEGALCASE-00163104	0	0	0.56	0	1	1	1	1

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284	State v. Davis, 692 So. 2d 1055	3394+401	The defendant adjudication and sentence to 24 years at hard labor as a fourth offender under La.R.S. 15:529.1 are reinstated, the latter as amended by the court of appeal to delete the requirement of additional jail time for failure to pay court costs. As long as the punishment imposed on the defendant does not exceed what the legislature has prescribed, the court will not disturb the conviction or sentence. The court will hear to oppress or harass the defendant, principles of res judicata or double jeopardy do not preclude the state in a single prosecution from adjudicating the defendant a third offender and then adjudicating him a fourth offender in a subsequent proceeding on the basis of a conviction and documentary evidence not used previously to determine his multiple offender status. Cf. State v. Hill, 340 So.2d 309, 332 (La. 1976) ("To the extent that "a hearing on multiple offender status is a trial in only a very technical sense, it is one which is subject to the same procedural and technical deficiencies in the state department may require a negative determination by the court but do not preclude re-litigation of the defendant multiple offender status at a subsequent hearing.)"	Principles of res judicata or double jeopardy do not preclude state in a single prosecution from adjudicating defendant a third offender and then adjudicating him a fourth offender in subsequent proceeding on basis of conviction and documentary evidence not used previously to determine his multiple offender status, as long as punishment imposed on defendant does not exceed what legislature has prescribed. The court will hear to oppress or harass the defendant, principles of res judicata or double jeopardy do not preclude the state in a single prosecution from adjudicating the defendant a third offender and then adjudicating him a fourth offender in a subsequent proceeding on the basis of a conviction and documentary evidence not used previously to determine his multiple offender status. Cf. State v. Hill, 340 So.2d 309, 332 (La. 1976) ("To the extent that "a hearing on multiple offender status is a trial in only a very technical sense, it is one which is subject to the same procedural and technical deficiencies in the state department may require a negative determination by the court but do not preclude re-litigation of the defendant multiple offender status at a subsequent hearing.)"	What do principles of res judicata or double jeopardy not preclude?	015014.docx	LEGALCASE-00164645- LEGALCASE-00164646	Order: SA 0	0.56 1	839 1	15,344 0	14,873 0	21,876 1	9,029
285	Coleman v. Sheets, 598 F.3d 242	1394+95.1	The Double Jeopardy Clause of the Fifth Amendment provides that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb." U.S. Const. amend V. It applies to the States via the Fourteenth Amendment. See Benton v. Maryland, 398 U.S. 784, 794, 89 S.Ct. 2056, 23 L.Ed.2d 707 (1969). It also protects a defendant's "valued right to have his trial completed by a particular tribunal." Wade v. Hunter, 336 U.S. 658, 689, 69 S.Ct. 834, 93 L.Ed. 974 (1949). At the same time, however, the winner pays for a trial concluded, and because those circumstances do not invariably create unfairness to the accused, his valued right to have the trial concluded by a particular tribunal is sometimes subordinate to the public interest in affording the prosecutor one full and fair opportunity to present his case. United States v. Johnson, 198 F.3d 889, 594 (6th Cir.1999) (internal quotation marks and citation omitted).	The double jeopardy clause of the fifth amendment protects a defendant's valued right to have his trial completed by a particular tribunal; at the same time, given the variety of circumstances that may make it necessary to discharge a jury before a trial is concluded, and because those circumstances do not invariably create unfairness to the accused, a defendant's sometimes subordinate to the public interest in affording the prosecutor one full and fair opportunity to present his evidence to an impartial jury. U.S.C.A. Const.Amend. 5, 4	Is the valued right to have the trial concluded by a particular tribunal subordinate to the public interest?	016020.docx	LEGALCASE-00165740- LEGALCASE-00165741	SA, Sub 0	0.54 0	0 0	1 1	14,873 0	21,876 1	9,029
286	McKewin v. Collier, 353 F. Supp. 485	1394+107.1	"The Fifth Amendment protection is, of course, qualified because not all subsequent prosecutions are automatically barred. For example, an individual who is acquitted after a trial by jury may later be convicted if he arrives at a verdict, United States v. Price, 22 U.S. (9 Wheat.) 579, 6 L.Ed. 165 (1824); where the judge discovers that one or more members of the jury may harbor an important bias, and dismisks the panel, Thompson v. United States, 155 U.S. 271, 15 S.Ct. 73, 39 L.Ed. 346 (1894); where a prior conviction is waived upon appeal, Ball v. United States, 163 U.S. 662, 16 S.Ct. 1192, 41 L.Ed. 300 (1896); or where the conviction is set aside on collateral grounds, United States v. Rabon, 377 U.S. 465, 84 S.Ct. 1531, 15 L.Ed.2d 468 (1964). In such cases, the government has a new category of cases in which a subsequent prosecution is clearly permissible. The Supreme Court, recognizing the elusive nature of the problem, has steadfastly declined to formulate hard and precise rules. Instead, each case is to be resolved on an individual basis."	Accused may be constitutionally retried where first jury is unable to arrive at verdict, where judge discovers that one or more members of jury may harbor an important bias, and dismisks the panel, conviction is vacated upon appeal, or where convictions are set aside in collateral proceeding. U.S.C. Aconst. Amend. 5.	Can an accused be constitutionally retried where a first jury is unable to arrive at verdict or where a judge discovers that one or more members of jury may harbor important bias?	016118.docx	LEGALCASE-00165866- LEGALCASE-00165867	SA, Sub 0	0.69 0	0 0	1 1	14,873 0	21,876 1	9,029
287	Gresham v. Truong, 9 New York P.S. 1st 160, 151 S.W.2d 56	3074+3	A motion in limine is a procedural device that permits a party to identify issues that are irrelevant, immaterial, or unduly prejudicial to the merits of a case. Weider v. Seiche, 14 S.W.3d 335, 363 (Tex.App., Houston [14th Dist.] 2000, no pet.). The purpose of the motion in limine is to prevent the other party from asking prejudicial questions or introducing prejudicial evidence in front of the jury without first asking the trial court's permission. Hartford Acc. & Indem. Co. v. McCordell, 369 SW 2d 331, 335 (Tex.1963). Weidner, 14 S.W.3d at 363. Because a trial court's ruling on a motion in limine preserves nothing for review, a party must object at trial to preserve its complaint. Hartford Acc. & Indem. Co., 369 SW 2d at 335. However, not all pretrial motions are motions in limine. See Hickaby v. A.G. Perry & Son, Inc., 20 SW 3d 194, 203 (Tex.App., Teasarkana 2000, pet. denied).	A "motion in limine" is a procedural device that permits a party to identify issues that are irrelevant, immaterial, or unduly prejudicial to the merits of a case. Weider v. Seiche, 14 S.W.3d 335, 363 (Tex.App., Houston [14th Dist.] 2000, no pet.). The purpose of the motion in limine is to prevent the other party from asking prejudicial questions or introducing prejudicial evidence in front of the jury without first asking the trial court's permission. Hartford Acc. & Indem. Co. v. McCordell, 369 SW 2d 331, 335 (Tex.1963). Weidner, 14 S.W.3d at 363. Because a trial court's ruling on a motion in limine preserves nothing for review, a party must object at trial to preserve its complaint. Hartford Acc. & Indem. Co., 369 SW 2d at 335. However, not all pretrial motions are motions in limine. See Hickaby v. A.G. Perry & Son, Inc., 20 SW 3d 194, 203 (Tex.App., Teasarkana 2000, pet. denied).	"Is a motion in limine a procedural device that permits a party to identify issues that are irrelevant, immaterial, or unduly prejudicial to the merits of a case? If so, the trial court may be asked to make and the purpose to prevent the other party from asking prejudicial questions or introducing prejudicial evidence in front of the jury without first asking the trial court's permission?"	018836.docx	LEGALCASE-00121332- LEGALCASE-00121333	Condensed, SA 0	0.6 0	1 1	15,344 0	14,873 0	21,876 1	9,029

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288	Kaiser v. Umiak Inc., 108 P.3d 876	30+32-81	The superior court dismissed Kaiser's claim under Alaska Rule of Civil Procedure 12(b)(6). Kaiser's "Motion to Show Good Cause" asserted facts not submitted with regard to a motion to dismiss. The pleadings are not limited with regard to a motion to dismiss. The superior court must consider all facts relevant to its decision. The superior court's summary judgment under Alaska Rule of Civil Procedure 56, When the superior court does neither, but instead decides the motion under rule 12(b)(6) without stating whether it is considering the outside materials or not, this court has three options: "[W]e may reverse and remand for proper consideration, or we may review the superior court's decision as if the motion for dismissal had been granted after exclusion of outside materials, or as if summary judgment had been granted after conversion of outside materials to one type of evidence." The superior court's decision, which standard the superior court used in this case, nor whether the court excluded outside materials. On March 3, 2003, the superior court entered an order by which "Kaiser's complaint [was] dismissed with prejudice." It noted on that order that it considered Kaiser's "Motion to Show Good Cause" as an opposition to dismissal. But the superior court's final judgment, entered on April 14, 2003, announced that it had granted summary judgment for the defendants.	When materials outside pleadings are submitted with regard to motion to dismiss, and superior court neither explicitly excludes materials or converts motion into one for summary judgment, but instead decides the motion without stating whether it is considering outside materials, the superior court must consider all facts relevant to its decision. If the court considers, or may review superior court's decision as if motion for dismissal had been granted after exclusion of outside materials, or as if summary judgment had been granted after conversion of motion to dismiss into one for summary judgment. Rules Civ.Proc., rule 12(b)(6).	"When can the superior court either exclude the evidence or convert the motion into one for summary judgment?"	Pretial Procedure - Memo #9374 - C - AC_03039.docx	ROSS-003294738-ROSS-003294739	Condensed SA	0.54	839 0	15,344 0	14,873 0	21,876 1	9,029
289	Becker v. Zellmer, 292 Ill. App. 3d 116	307A+679	As such, section 2' 0.5 foot "does not raise affirmative factual defenses but alleges only defects on the face of the complaint." Bryson, 174 Ill.2d at 86, 220 Ill.Doc. 335, 572 N.E.2d 1202. A reviewing court must determine whether the motion to dismiss should be granted. The motion should not be denied unless the plaintiff has shown that he or she is entitled to relief. See, e.g., Brock v. Anderson Road Ass'n, 287 Ill. App.3d 16, 202 Ill.Doc. 451, 677 N.E.2d 985 (1997). A plaintiff would entitle the plaintiff to recovery. Bryson, 174 Ill.2d at 86-87, 220 Ill.Doc. 335, 572 N.E.2d 1207.	When presented with motion to dismiss for failure to state claim, reviewing court must accept as true all well-pledged facts and reasonable inferences that may be drawn therefrom and determine whether the motion to dismiss should be granted. The motion should not be granted unless the plaintiff has shown that he or she is entitled to relief. See, e.g., Brock v. Anderson Road Ass'n, 287 Ill. App.3d 16, 202 Ill.Doc. 451, 677 N.E.2d 985 (1997). A plaintiff would entitle the plaintiff to recovery. S.H.A. 735 ILCS 5/2-615.	"When presented with a motion to dismiss for failure to state a claim, should the reviewing court accept as true all well-pledged facts and reasonable inferences that can be drawn therefrom?"	Pretial Procedure - Memo #9285 - C - SA_03044.docx	ROSS-003296527-ROSS-003296528	SA, Sub	0.42	0 0	0 0	1 1	1 1	
290	Plains Commerce Bank v. Long Family Land & Cattle Co., 554 U.S. 316	209+223	We have recognized two exceptions to this principle, circumstances in which tribes may exercise civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands." Montana, 450 U.S., at 565, 101 S.Ct. 1245. First, "[a] tribe may regulate, through taxation, licensing, or other means, activities of nonmembers who enter or operate in, affect commerce with, or injure the interests of Indians on reservation." Second, "[a] tribe may regulate, through taxation, licensing, or other means, activities of nonmembers who enter or operate in, affect commerce with, or injure the interests of Indians on reservation when that conduct threatens or has some direct effect on political integrity, economic security, or health or welfare of the tribe."	Montana exceptions to principle that tribes has no authority to regulate use of non-Indian fee land are: (1) tribe may regulate, through taxation, licensing, or other means, activities of nonmembers who enter or operate in, affect commerce with, or injure the interests of Indians on reservation when that conduct threatens or has some direct effect on political integrity, economic security, or health or welfare of the tribe.	"When can an Indian tribe exercise civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands?"	Indians - Memo 85 - BP.docx	ROSS-003310472-ROSS-003310474	SA, Sub	0.44	0 0	0 0	1 1		
291	Bank of Am. N.A. v. Wells Fargo Bank, N.A., 126 Wash. App. 710	366+314	Equitable subrogation provides an exception to the first in time rule by permitting a person who pays off an incurrence to assume the same legal position as the original creditor. In this case, the intervenor lender advanced the debt to the borrower, and the intervenor lender was the first to advance the debt. The intervenor lender is entitled to equitable remedy. Subrogation is designed to avoid one person receiving an unearned windfall, i.e., the intervening lienholder through an advancement in priority, at the expense of another, i.e., the new mortgagee who paid the prior debt. First Commonwealth Bank v. Heller, 863 A.2d 1153, 1157 (2004). Restatement (Third) of Property: Mortgages § 7.6 cmt. 4 (1997).	As an equitable remedy, subrogation is designed to avoid one person receiving an unearned windfall, i.e., the intervening lienholder through an advancement in priority at the expense of another, i.e., the new mortgagee who paid the prior debt. Restatement (Third) of Property: Mortgages § 7.6 comment.	"As an equitable remedy, is subrogation designed to avoid one person receiving an unearned windfall, i.e., intervening beneficiaries through an advancement in priority, at the expense of another, for example the new mortgagee who paid the prior debt?"	Subrogation - Memo # 975 - C - LK.DOCX	ROSS-003295863-ROSS-003295862	SA, Sub	0.54	0 0	1 1	1 1		
292	Fed. Land bank of Baltimore v. Joyce, 179 Va. 394	366+27	Subrogation has been generally classified as being either legal or conventional. Legal subrogation arises by operation of law where one having a liability, or right, or a fiduciary relation in the premises pays a debt due by another under such circumstances that he is in equity entitled to the security or obligation held by the creditor whom he has paid, and conventional subrogation, on the other hand, arises where by payment of a debt by one person, another person is discharged, and the payee discharges a prior lien might be substituted to the security of the prior lienor. The progressive extension of both types of subrogation has somewhat obliterated this line of division. See 70 ALR, 1396, 1397.	"Subrogation" is generally classified as being either legal or conventional. "Legal subrogation" arising by operation of law where one having a liability, or right, or a fiduciary relation in the premises pays a debt due by another under such circumstances that he is in equity entitled to the security or obligation held by the creditor whom he has paid, and security or obligation held by the creditor whom he has paid, and conventional subrogation" arising where by express or implied payment of a debt by one person, another person is discharged, and the payee discharges a prior lien might be substituted to the security of the prior lienor.	How is subrogation classified?	Subrogation - Memo 71 - VPC.docx	ROSS-003284641-ROSS-003284643	SA, Sub	0.19	0 0	0 0	1 1		

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293	Bergin City v. Dep't of Pub. Utilities, 117 N.J. Super. 384.	317A-102	The Board of Public Utility Commissioners was intruded by the Legislature to have the widest range of regulatory power over public utilities. The provisions of Title 48 are to be construed liberally. Deptford Tp. v. Woodbury Twp. Sewerage Corp., 54 N.J. 414, 424, 255 A.2d 737 (1969); State ex rel. Electric and Gas Co. v. Board of Public Utilities, 145 A.2d 313, 161 S.W.2d 18, 52 N.J. 206, 208, 145 A.2d 54 (Ct.Div. 1958). The powers delegated by the Legislature to the Board are to be read broadly. Any exception must be carefully circumscribed. Deptford Tp. v. Woodbury Twp. Sewerage Corp., Supra, 54 N.J. at 426, 255 A.2d at 737. Title 48 reflects a legislative recognition that "public interest in proper regulation of public utilities transcends municipal or county lines, and that a centralized control must be entrusted to an agency whose continually developing expertise will assure adequate utility services."	The statutes governing public utilities reflect legislative recognition that public interest in proper regulation of public utilities transcends municipal or county lines, and that centralized control must be entrusted to an agency whose continually developing expertise will assure adequate utility services?	Does public interest in proper regulation of public utilities transcend municipal or county lines entrusting an agency to assure adequate utility services?	042571.docx	LEGALBASE-0012095-1 LEGALBASE-0012095-2	SA, Sub	0.67	839	15,344	14,873	21,876	9,029
										0	0	1	1	
294	C. Green-Searing v. American Bank Note Co., 248 S.W.2d 779.	36e+1	When equitable subrogation is an issue, each case is usually controlled by its facts. In American Bank Note Co. v. C. Green-Searing, 248 S.W.2d 779 (Tex.App.-Houston) [1st Dist.] 1959, no writ. The doctrine allows a party who pays the debt of another to put on the released creditor's shoes and collect reimbursement. Driltec Techs., Inc. v. Remp, 64 S.W.3d 212, 216 (Tex.App.-Houston) [14th Dist.] 2001, no pet.). Subrogation is more widely known in the context of insurance companies seeking subrogation from their insureds for having indemnified under a contract of indemnity. American Bank Note Co. v. C. Green-Searing, 248 S.W.2d 779 (Tex.App.-Houston), 889 S.W.2d 537, 541-542 (Tex.App.-Corpus Christi 1993, writ denied).	The doctrine of subrogation is broad enough to include every instance in which one person discharges the debt of another and which in equity and good conscience should have been discharged by the latter.	"Is the doctrine of subrogation broad enough to include every instance in which one person discharges the debt of another and which in equity and good conscience should have been discharged by the latter?"	Subrogation - Memo # 5311 - C - 30.docx	LEGALBASE-00011246- LEGALBASE-00011247	SA, Sub	0.78	0	0	1	1	
										0	0	1	1	
295	Bank of Am. N.A. v. Wells Fargo Bank N.A., 126 Wash. App. 710.	36c+3 14f	Equitable subrogation provides an exception to the first in time rule by permitting a person who pays off of the preexistence to assume the same lien priority position as the holder of the original encumbrance. Houston v. Bank of Am. Fed. Sav. Bank, 119 Nev. 485, 78 P.3d 71, 73 (2003). As an equitable remedy, subrogation is designed to avoid one person receiving an unearned windfall. I.e., the intervening lienholder through an advancement in priority, at the expense of another, i.e., the new mortgagees who paid the prior debt. First Commonwealth Bank v. Heller, 863 A.2d 1153, 1157 (2004). Restatement (Third) of Property: Mortgages § 7.6 cmt. a (1997).	As an equitable remedy, subrogation is designed to avoid one person receiving an unearned windfall. I.e., the intervening lienholder through an advancement in priority, at the expense of another, i.e., the new mortgagees who paid the prior debt. Restatement (Third) of Property: Mortgages § 7.6 comment.	"As an equitable remedy, subrogation is designed to avoid one person receiving an unearned windfall, i.e., the intervening lienholders through an advancement in priority, at the expense of another or the new mortgagees who paid the prior debt?"	Subrogation - Memo # 575 - C - AP.docx	R055-003151768-R055-00315769	SA, Sub	0.54	0	0	1	1	
										0	0	1	1	
296	Hock River Lumber Corp. v. Wisconsin, 83 W. 2d 235.	36e+1	Subrogation is an equitable doctrine invoked to avoid unjust enrichment. It is proper whenever one person has received a benefit or advantage without paying a debt which in equity and good conscience should be satisfied by another. D'Amelio v. Cornell Postcard Products Co., 19 Wis.2d 390, 399, 400, 120 N.W.2d 70 (1963); Dairyman's State Bank v. Tesoman, 16 Wis.2d 314, 322, 114 N.W.2d 460 (1962). As a rule, however: "... the right of a party to subrogation, by reason of advances made to a debtor, depends upon (1) his being secondarily liable; or (2) the necessity for acting to protect his own interests; or (3) an agreement that he would be so subordinated." 558 S.W.2d 126, 128 (1994). [Emphasis added] In the instant case there is no suggestion that the first or second of these categories are applicable. The trial court held that the facts of this case put it within the third category and that subrogation arises from an agreement of the parties, Mint and Universal.	Subrogation is an equitable doctrine invoked to avoid unjust enrichment, i.e., where one person receives a benefit or advantage without paying a voluntarily debt which in equity and good conscience should be satisfied by another.	Is subrogation an equitable doctrine invoked to avoid unjust enrichment? Is it proper whenever one person has received a benefit or advantage other than a voluntarily debt which in equity and good conscience should be satisfied by another?	Subrogation - Memo # 623 - AND C.docx	R055-003297066-R055-003297067	Condensed, SA	0.78	0	1	0	1	
										0	1	0	1	
297	Ow v. State of Israel, 100 F. Supp. 2d 8.	221v+42	A bare cousin of the political question doctrine, the act of state doctrine prevents a court from deciding a case "when the outcome turns upon the legality - or official action by a foreign sovereign performed within its own territory." Owens v. Republic of Sudan, 374 F.Supp.2d 1, 26 (D.C.D.C.2005) (quoting Riggs Nat'l Corp. & Subsidiaries v. Comm't of IRS, 163 F.3d 1383, 1387 (D.C.Cr. 1999)). While the political question doctrine is based on constitutional separation of powers concerns, see Doe Mem. Op. at 9. The act of state doctrine is based on prudential considerations of international comity, respect for sovereignty, and intergovernmental comity, see Rong, 382 F.Supp.2d at 99 n. 12. It reflects the judiciary's reluctance to complicate foreign affairs by validating or invalidating the actions of foreign sovereigns. Owens, 374 F.Supp.2d at 26 (quoting W.S. Knapikard & Co. v. Envt. Technologies Corp., 499 U.S. 404, 110 S.Ct. 701, 107 L.Ed.2d 816 (1990)). The doctrine is implicated "when the outcome of the court's inquiry is determined by reference to the official action of a foreign sovereign." Abou-Akleh v. United States, 305 F.3d 248, 57 F.3d 1020 (Ct.Cl. 2004) (citing W.S. Knapikard, 493 U.S. at 407 n.10, 110 S.Ct. 703). When it applies, the act of state doctrine is a rule of law that requires courts to presume that actions taken within a foreign sovereign's own territory are valid. World Wide Minerals, Ltd. v. Republic of Kazakhstan, 296 F.3d 1154, 1165 (D.C.Cr. 2002).	The act of state doctrine, which is a close cousin of the political question doctrine, prevents a court from deciding a case when the outcome turns upon the legality or illegality of official action by a foreign sovereign performed within its own territory.	Does the act of state doctrine prevent a court from deciding a case when the outcome turns upon the legality or illegality of official action by a foreign sovereign performed within its own territory?	International Law - Memo # 136 - C-SA.docx	R055-003297251516-R055-003325618	Order, SA	0.83	1	0	0	1	
										1	0	0	1	

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298	Doe v. Exxon Mobil Corp., 89 F. Supp. 3d 75	22:1-42	The act of state doctrine "requires American courts to presume the validity of official acts of foreign sovereigns performed within their own territory." <i>Id.</i> at 12 (citing <i>Republic of Argentina v. Welton Int'l, Inc.</i> , 501 U.S. 497, 713 F.2d 124, 52-2240, 159 L.Ed.2d 1 (2004) (internal quotation marks omitted)). The doctrine must be considered when "the relief sought or the defense interposed would [require] a court in the United States to declare invalid the official act of a foreign sovereign performed within its own territory." <i>Id.</i> at 12 (citing <i>McKesson Corp. v. Islamic Republic of Iran</i> , 672 F.2d 1096, 1073 (D.C. Cir. 2002) (quoting <i>W.S. Kirkpatrick & Co. v. Ewtl. Testones Corp.</i> , 493 U.S. 400, 405, 110 S.Ct. 701, 107 L.Ed.2d 816 (1990)). It provides a "dispositive" rule of law that "prevents a court in the United States from requiring a foreign sovereign when the legality of that act is at issue in a case." <i>W.S. Kirkpatrick & Co.</i> , 493 U.S. at 406, 110 S.Ct. 701. On the other hand, the act of state doctrine is not an "exception for cases and controversies that may embarrass foreign governments." <i>Id.</i> at 409, 110 S.Ct. 701. The burden of proving that an act of state occurred lies with the party asserting the defense. <i>Agudas Chasidei Chabad of U.S. v. Russian Fed'n</i> , 528 F.3d 934, 951 (D.C. Cir. 2008).	Act of state doctrine must be considered when the relief sought or the defense interposed would require a court in the United States to declare invalid the official act of a foreign sovereign performed within its own territory.	Must the act of state doctrine be considered when the relief sought or the defense interposed would require a court in the United States to declare invalid the official act of a foreign sovereign performed within its own territory?	International Law - Memo # 209 - C - MS.docx	ROSS-00281356-KO55-00338157	Condensed, SA, Sub	0.82	839	15,344	14,873	21,876	9,079
299	Nraka v. Fed. Republic of Nigeria, 238 F. Supp. 3d 17	22:1-42	Even though the Court has jurisdiction over Nraka's suit, many of his specific claims run afoul of the act of state doctrine. See <i>id.</i> at 12 (act of state doctrine represents "a rule of judicial restraint in decisionmaking, not a jurisdictional limitation"). The act of state doctrine is a function of the "domestic separation of powers, reflecting the strong sense of the Judicial Branch that its engagement in the task of passing on the validity of foreign sovereign acts is not an appropriate function for the courts." <i>W.S. Kirkpatrick & Co. v. Ewtl. Testones Corp.</i> , 493 U.S. 400, 404, 110 S.Ct. 701, 107 L.Ed.2d 816 (1990) (internal quotation marks omitted). "The doctrine directs United States courts to refrain from deciding a case when the outcome turns upon the legality or illegality of official action by a foreign sovereign performed within its own territory." <i>Riggs Nat'l Corp. & Subsidiaries v. Comm'r of IRS</i> , 163 F.3d 1363, 1367 (D.C. Cir. 1999) (citing <i>W.S. Kirkpatrick</i> , 493 U.S. at 400, 110 S.Ct. 701). When the official act is a private individual or entity, the act of state doctrine is not applicable. <i>World Wide Minerals, Ltd. v. Republic of Kazakhstan</i> , 296 F.3d 1154, 1165 (D.C. Cir. 2002) (quoting <i>W.S. Kirkpatrick</i> , 493 U.S. at 405, 110 S.Ct. 701). But the doctrine only applies to "official" state action; that is, to "conduct that is by nature distinctly sovereign" and "cannot be undertaken by a private individual or entity." <i>McKesson Corp. v. Islamic Republic of Iran</i> , 672 F.2d 1096, 1073 (D.C. Cir. 2002). Purely commercial acts do not qualify. See <i>id.</i> at 1096, 1073 (D.C. Cir. 2002).	"Act of state doctrine" is a function of the domestic separation of powers, reflecting the strong sense of the Judicial Branch that its engagement in the task of passing on the validity of foreign acts of state may hinder the conduct of foreign affairs."	"Is the act of state doctrine a function of the domestic separation of powers, reflecting the strong sense of the Judicial Branch that its engagement in the task of passing on the validity of foreign acts of state may hinder the conduct of foreign affairs?"	International Law - Memo # 24 - C - LK.docx	ROSS-00313129-KO55-00331310	Condensed, SA	0.85	0	1	0	1	1
300	Nat'l Coal. Gov't of Union of Burma v. Unocal, 176 F.R.D. 229	22:1-42	The act of state doctrine precludes a court of the United States from considering a plaintiff's claims where either the claims or the defenses asserted would require the court to determine that a foreign sovereign's official acts performed in its own territory were invalid. <i>W.S. Kirkpatrick & Co. v. Ewtl. Testones Corp.</i> , 493 U.S. 400, 405, 110 S.Ct. 701, 107 L.Ed.2d 816 (1990). In <i>W.S. Kirkpatrick</i> , the Court, in asserting the applicability of the doctrine, that by adjudicating plaintiff's claims, this Court will necessarily pass judgment on the validity of SLORC's official acts, thereby interfering with the foreign policy efforts of the United States Congress and the President.	Act of state doctrine precludes a court of the United States from considering plaintiff's claims where either claims or defenses asserted would require court to determine that foreign sovereign's official acts performed in its own territory were invalid.	Does the act of state doctrine preclude a court of the United States from considering plaintiff's claims where either claims or defenses asserted would require court to determine that foreign sovereign's official acts performed in its own territory were invalid?	International Law - Memo # 319 - C - NS.docx	ROSS-00315882-KO55-003315883	Condensed, SA	0.65	0	1	0	1	1
301	Bardis v. Harlow & Jones, 925 F. Supp. 700	22:1-42	Two practical rationales underlie the doctrine. First, it permits the United States courts to exercise their exclusive control over foreign policy. Second, when disputed property is located in foreign sovereign territory, it would likely be futile, to say nothing of arrogant, for United States court to pronounce on self-contained activities of independent state. See <i>id.</i> at 521.	Two practical rationales underlie the Act of State Doctrine. First, it permits the United States courts to exercise their exclusive control over foreign policy. Second, when disputed property is located in foreign sovereign territory, it would likely be futile, to say nothing of arrogant, for United States court to pronounce on self-contained activities of independent state.	What are the two practical rationales that underlie the Act of State Doctrine?	020305.docx	LEGALCASE-00123342-LEGALCASE-00123348	Condensed, SA	0.25	0	1	0	1	1
302	United States v. One Gulfstream G-55, et al., 941 F. Supp. 2d 1	22:1-42	The "act of state doctrine" precludes domestic courts from inquiring into the validity of the official acts of a foreign sovereign committed within its own territory. <i>McKesson Corp. v. Islamic Republic of Iran</i> , 672 F.2d 1096, 1073 (D.C. Cir. 2002) (quoting <i>W.S. Kirkpatrick & Co. v. Ewtl. Testones Corp.</i> , 493 U.S. 400, 405, 110 S.Ct. 701, 107 L.Ed.2d 816 (1990)). The policies underlying the doctrine include international comity, respect for the sovereignty of foreign nations on their own territory, and the avoidance of embarrassment to the Executive Branch in its conduct of foreign relations. <i>World Wide Minerals, Ltd. v. Republic of Kazakhstan</i> , 296 F.3d 1154, 1165 (D.C. Cir. 2002).	Does the act of state doctrine preclude any court in the United States from declaring that an official act of a foreign sovereign performed within its own territory is invalid?	Does the act of state doctrine preclude any court in the United States from declaring that an official act of a foreign sovereign performed within its own territory is invalid?	020798.docx	LEGALCASE-00123720-LEGALCASE-00123722	SA, Sub	0.71	0	0	1	1	1

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303	Peligrini v Weiss, 168 Cal App 4th 515	307A-13	Generally speaking, in limine motions are disfavored in cases in which they are used not to determine in advance the court's projected ruling if presented with an evidentiary objection during trial, but instead to serve as a substitute for a dispositive statutory motion. The increasing prevalence of the practice of using in limine motions in this way produces confusion about what the parties' positions are regarding their constitutional rights to jury trial and confrontation are implicated. As we stated in the recent case of Amower v. Photon Dynamics, Inc. (2009) 158 Cal App 4th 1582, 1594, 71 Cal Rptr 3d 361: "The disadvantages of such shortcuts are obvious. They circumvent procedural protections provided by the statutory motions or by trial on the merits; they risk blindsiding the opposing party; and, in some cases, they could infringe a litigant's right to a jury trial." (Id. Connors Jr., 158 JTR 104.) The better practice is to reserve all objections until after the close of testimony and object either by the statutory processes," (Id at p. 1588-71 Cal Rptr 3d 361); see also Miller v. Cambell, Warburton, Fitzsimmons, Smith, Mendell & Pastore (2008) 162 Cal App 4th 1331, 76 Cal Rptr 3d 649).	Generally speaking, in limine motions are disfavored in cases in which they are used not to determine in advance the court's projected ruling if presented with an evidentiary objection during trial, but instead to serve as a substitute for a dispositive statutory motion.	"Generally speaking, are in limine motions disfavored in cases in which they are used not to determine in advance the court's projected ruling if presented with an evidentiary objection during trial, but instead to serve as a substitute for a dispositive statutory motion?"	Pretial Procedure - Memo #330 - C - ANC.docx	R05S-00328474E-R05S-00328474F	Condensed_SA	0.78	839	15_344	14_873	21_876	Multiple Differences 9,029
											0	1	0	1
304	City of New York v. Consolidated Edison Co. of New York, 27A A.D.2d 89	315-71	This principle is equally applicable to the state at bar. While our Edition may have a property interest in the land where its installations are situated, its use of that land is subject to regulation when necessitated by public safety. "[Under] our system of government, one of this State's primary ways of preserving the public weal is restricting the uses individuals can make of their property....Long ago it was recognized that 'all property in this country is held under the implied obligation that the owner's use of it shall not be injurious to the community,' and the Takings Clause did not prevent the legislature from imposing restrictions upon owners of real estate assets [in order] to enforce it." (Rekstone, supra, at 493.*92, 107 S.Ct. 1232, 94 L.Ed.2d 472 [citations omitted].)	All property is held under the implied obligation that the owner's use of it shall not be injurious to the community, and the Takings Clause did not transform that principle to one that requires compensation whenever the state asserts its power to enforce it. U.S.C.A. Const.Amend. 5.	"Does the Takings Clause transform the principle that all property in this country is held under the implied obligation that the owner's use of it shall not be injurious to the community, to one that requires compensation whenever the state asserts its power to enforce it?"	QJ7514.docx	LEGALAE-0031466-E LEGALAE-0031466-F	Condensed, SA	0.64	0	1	0	1	
	Roe v Unocal Corp., 70 F. Supp. 3d 1073	221+342	Because the goal of the act of state doctrine is to protect the interests of the United States and of the international community, the doctrine is not applied at every opportunity. Instead, as the Supreme Court recently put it, courts must exercise discretion before invoking the doctrine. In exercising that discretion, courts should consider whether there is a clear duty imposed by international law, whether the issue involves private-party litigation, and whether the application of the doctrine will promote national policy goals and comports with principles of justice. The act of state doctrine does not establish an exception for cases and controversies that may embarrass foreign governments, but merely requires that, in the process of deciding, the acts of foreign sovereigns taken within their own jurisdiction shall be deemed valid.Kirkpatrick, 493 U.S. at 402, 110S.Ct. 701. In short, the act of state doctrine may only be invoked to bar adjudication of a plaintiff's claims when the nature of the claim implicates the political relations between the United States and the foreign sovereign's official acts. In other words, when "the outcome of the case turns upon [] the effect of official action by a foreign sovereign." Id. at 406, 110 S.Ct. 701.	Act of state doctrine may only be invoked to bar adjudication of plaintiff's claims when nature of claims or defenses will require court to declare invalid foreign sovereign's official acts. In other words, when outcome of case turns upon effect of official action by foreign sovereign.	Can the act of state doctrine only be invoked to bar adjudication of plaintiffs claims when nature of claims or defenses will require the court to declare invalid foreign sovereign's official act?	International Law - Memo #409 - C - MJD.docx	R05S-00329879H-R05S-00329879G	Condensed, SA	0.73	0	1	0	1	
305	Beenal v Freepress, LLC	24+765	To allege state action, the challenged conduct must be attributable to the state. In other words, it must be official conduct. Restatement (Third), International Law § 701(c)(1). Where the defendant has no direct obligations under international law resulting from actions or inaction by employees, or other agents of a government or of any political subdivision, acting within the scope of authority or under color of such authority," 28U.S.C.A. § 1330b; Restatement (Third) of Foreign Relations Law of the United States § 207 comment.	To allege state action for purpose of claim under the Alien Tort Statute, the challenged conduct must be attributable to the state. In other words, it must be official conduct. Restatement (Third), International Law § 701(c)(1). Where the defendant has no direct obligations under international law resulting from action or inaction by employees, or other agent of a government or of any political subdivision, acting within the scope of authority or under color of such authority," 28U.S.C.A. § 1330b; Restatement (Third) of Foreign Relations Law of the United States § 207 comment.	"To allege state action for purpose of claim under the Alien Tort Statute, statute must the challenged conduct be official conduct?"	International Law - Memo #77 - Th.docx	R05S-00328341E-R05S-00328341B	SA_Sub	0.29	0	0	1	1	
											0	0	1	1
307	Compania de Gas de Nuevo Laredo, S. A. v. Enviro, 886 F.2d 322	221+342	Even such a narrow interpretation of the act of state doctrine, however, would require the court to refrain from examining the claim of conspiracy here. As we noted in Mitsui, application of the doctrine is determined by balancing several factors, namely, the degree of involvement of the foreign state, whether the validity of its law or regulation was an issue, whether the foreign state was a named defendant, and whether there was a showing of harm to American commerce.	Whether act of state doctrine is applicable is determined by balancing several factors, namely, the degree of involvement of the foreign state, whether the validity of its laws or regulations were in issue, whether the foreign state was a named defendant, and whether there was a showing of harm to American commerce?	"Is the act of state doctrine applicable by balancing several factors, namely, the degree of involvement of the foreign state, whether the validity of its laws or regulation was in issue, whether the foreign state was a named defendant, and whether there was a showing of harm to American commerce?"	International Law-Memo #758 - C - SJL.docx	R05S-00329560Z-R05S-00329560A	SA_Sub	0.36	0	0	1	1	
											0	1	0	1
308	Commercial Credit Equip. Corp. v. Hutton, 429 F. Supp. 937	3667(1)	To the extent that a surety feels insecure and believes a debtor is in default, he is always entitled to pay off the indebtedness, be subrogated to the rights of the creditor, and then repossess taking upon himself the significant risks of a wrongful repossession or of committing a breach of contract. To the extent that a surety feels insecure and believes a debtor is in default, he is always entitled to pay off the indebtedness, be subrogated to the rights of the creditor, and then repossess taking upon himself the significant risks of a wrongful repossession or of committing a breach of contract."	The peace in connection with the repossession.	"Is a surety always entitled to pay off indebtedness, be subrogated to the rights of the creditor, and then reposeses, taking upon himelf the significant risks of a wrongful repossession or of committing a breach of connection with the repossession?"	Subrogation - Memo 926 - RK.docx	R05S-00331407I-R05S-00331407B	Condensed, SA	0.44	0	1	0	1	
											0	1	0	1

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	Behrend v. Bell Tel. Co., 242 Pa. Super. 47.	317A+111	The extent of the PUC's jurisdiction has been clearly outlined by the courts of this Commonwealth in the course of a long series of opinions. In Lansdale Borough v. Philadelphia Electric Co., 408 Pa. 647, 650-51, 170 A.2d 965, 967 (1961) the Supreme Court, after an extensive review of prior cases concerning PUC jurisdiction, concluded that its jurisdiction in public utility matters extends to all phases of the business of the utility, public is in the PUC not in the courts. It has been so held involving rates, services, rules of service, extension and operation, hazard to public safety due to use of utility facilities, installation of utility facilities, location of utility facilities, obtaining, alerting, dissolving, abandoning, selling or transferring any right, power, privilege, franchise or property and rights to serve particular territory. (Footnotes omitted). The exclusive regulatory jurisdiction conferred on the Public Utility Commission in the case of public utilities was affirmed in Behrend v. Bell Telephone Co., 431 Pa. 63, 243 A.2d 346 (1968); Chester County v. Philadelphia Electric Co., 420 Pa. 422, 218 A.2d 331 (1966); Colonial Products Co. v. PUC, 188 Pa. Super. 163, 146 A.2d 657 (1958); Lansdale Borough v. Philadelphia Electric Co., supra. No other entity can interfere with the commission's performance of its function by making additional or different requirements of a utility. Byrnes township may not require a utility to install more than one meter per house or by conducting an independent appraisal of utility's service to the public. Elmhorn v. Philadelphia Electric Co., 410 Pa. 630, 180 A.2d 569 (1968).	Exclusive regulatory jurisdiction conferred on the Public Utility Commission in cases involving rates, services, rules of service, extension and expansion, hazard to public safety through the use of utility facilities, installation of utility facilities, location of utility facilities, obtaining, alerting, dissolving, abandoning, selling or transferring any right, power, privilege, franchise or property and rights to serve particular territory permit evaluation and control of utility activities as they affect public service. 17 P.S. § 211.508(a)(5); 66 P.S. §§ 110(20), 1171, 1183, 1343, 1491.	Does the Public Utilities Commission (PUC) have the jurisdiction to regulate the transfer of franchises to utilities?	042941.docx	LEGALBASE-00125862- LEGALBASE-00125864	SA, Sub	0.64	839 0	15,344 0	14,873 1	21,876 1	9,029
309														
310	Becker v. Crouse Corp., 822 F. Supp. 386	16+1.20(5)	Personal injury action brought within three years after boating accident allegedly occurred in Pennsylvania. Plaintiff was injured while traveling on fishing boat chartered in Kentucky's courts, and federal statute permitted passenger in fishing boat to recover damages for personal injury arising out of maritime tort if litigation was commenced within three years from date cause of action accrued. 46 App U.S.C.A. § 763a.	Personal Injury action brought within three years after boating accident allegedly occurred in Pennsylvania. Plaintiff was injured while traveling on fishing boat chartered in Kentucky's courts, and federal statute permitted passenger in fishing boat to recover damages for personal injury arising out of maritime tort if litigation was commenced within three years from date cause of action accrued. 46 App U.S.C.A. § 763a.	Does Tort cause of action accrue on date of accident or injury?	066470.docx	LEGALBASE-00126404- LEGALBASE-00126405	Condensed SA, Sub	0	1	1	1	1	1
311	Maryland Cas. Co. v. Messina, 604 F.2d 1068	413+1	The Workers' Compensation Act establishes an administrative process designed to adjudicate promptly a narrow issue of law containing limited facts. The purpose of the Act is to provide prompt compensation for workers' employment related injuries. Public Serv. Co. v. United Cable Television of Jefferson, Inc., 816 P.2d 289 (Colo.App. 1991). The hearing in which a worker's compensation claim is adjudicated is generally informal and expeditious.	"Does the workers' compensation act establish an administrative process designed to adjudicate promptly narrow issues of law containing limited facts. The purpose of the Act is to provide prompt compensation for workers' employment related injuries?"		048530.docx	LEGALBASE-00126770- LEGALBASE-00126771	Condensed SA, Sub	0.42	0	1	1	1	1
312	White v. Illinois Power Co., 139F. Supp. 2d 971	413+6	Illinois' Workers' Compensation Act entitles employees who have been injured in the course of employment to obtain an award of benefits if the employee can prove that he or she was employed by the employer at the time of the injury. The Workers' Compensation Act is his exclusive remedy and forfeits his right to recover tort damages for the same injury. See Belmontin v. United States, 64 F.3d 359, 302 F.Rt Cr.1995). Among other things, the Act provides that where one employer loans an employee to another employer and the employee then gets injured, the loaning employer and the borrowing employer are jointly and severally liable for any benefits which the employee is due.. See Ac., citing 820 ILCS 305/1 et seq. The Workers' Compensation Act is his exclusive remedy and forfeits his right to recover tort damages for the same injury. S.H.A. 820 ILCS 305/1 et seq;	"Does the Workers' Compensation Act allows employees who are injured in this course of their employment to obtain benefits, if the employee can prove that he or she was employed by the employer at the time of the injury. The Workers' Compensation Act is his exclusive remedy and forfeits his right to recover tort damages for the same injury?"		048481.docx	LEGALBASE-00127417- LEGALBASE-00127418	SA, Sub	0.62	0	0	1	1	
313	GMS Mine Repair & Maintenance, LLC v. BNSF, 798 F.3d 633	307A+747.1	In short, the case at bar presents a clear example of a situation where the parties would be benefited had the court conduct summary proceedings. The court's decision in O'Loughlin v. ServiceMaster Co., Ltd. Partnership, 216 Ill.App.3d 27, 159 Ill.Dec. 527, 532, 576 N.E.2d 956, 201 [1991].	The civil procedure rules require active judicial management of a case... intermediate that a trial court shall enter a scheduling order establishing the time for completion of discovery, the filing of dispositive motions, and generally guiding the parties toward a prompt, fair and cost-effective resolution of the case. W. Va. R. Civ. P. 16(b).	Do the civil procedure rules require active judicial management of a case?	026659.docx	LEGALBASE-00130412- LEGALBASE-00130413	Condensed Order, SA	0.57	1	1	0	1	1
314	Mitchell v. Moore, 405 So. 2d 347	307A+717.1	Next, appellants contend reversible error occurred when the trial court refused to grant a continuance because of the absence of their evidence. The trial court stated that it was satisfied that the testimony given in this jurisdiction that the car or refusal of a continuance rests within the discretion of the trial court. Ex parte Driver, 258 Ala. 238, 62 So.2d 241 (1952). The trial court's discretion, however, is not without limitations. In Driver, this court stated certain of those limitations as guidelines for determining whether the absence of a witness warrants a continuance. They may be fairly summarized as follows: it must be shown that the expected evidence will be material and competent; there must be a good reason why the evidence was not produced earlier; and the delay in producing the evidence must have been excused by the amount to secure the absent witness or evidence; the expected evidence must be credible and will probably affect the result of the trial; it must not be merely cumulative or in the nature of impeachment; and the motion for continuance must not be made merely for purposes of delay.	In order for the absence of a witness to warrant a continuance, it must be shown that the expected evidence will be material and competent; that the expected evidence was not produced earlier; and the delay in producing the evidence must have been excused by the amount to secure the absent witness or evidence; that expected evidence is credible and will probably affect result of trial, that the evidence will not be merely cumulative or in the nature of impeachment, and that the motion for continuance was not made merely for purposes of delay.	What must be shown to warrant a continuance because of the absence of a witness?	Pretial Procedure-Memo #1762 - C-P.docx	ROSS-003313258-ROSS-003313260	Condensed SA	0.49	0	1	0	1	

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330	Calvert v. Berg, 177 Wash. App. 466	307A-517.1	A plaintiff's right to a voluntary nonsuit must be measured by the posture of the case at the precise time the motion is made because the right to dismissal, if any, becomes fixed at that point. In <i>Autson v. Wahl</i> , the court held that the plaintiff had a right to a voluntary dismissal when he filed a motion to dismiss instead of responding to the merits of a defendant's motion for summary judgment. Although a voluntary dismissal under CR 41(d)(1)(B) generally deprives a court of authority to decide a case on the merits, "the court retains jurisdiction for the limited purpose of considering a defendant's motion for fees," which is collateral to the underlying proceeding. The investors filed their right to dismissal when they filed a CR 41 motion on May 21. Here, the first four provisions of the court's May 1 order suspended the investors' ability to conduct discovery as a sanction for non-compliance with the February 17 order and required their compliance with the order by producing materials within 30 days and filing a bill of particulars within 45 days. The fifth paragraph of the May 1 order provided that the investors' failure to comply with these provisions would "result in an award of sanctions." As of May 21, the investors had not defaulted in performance of their May 1 order obligations. Thus, they had not triggered the order's economic sanctions provision.	"Although a voluntary dismissal generally deprives a court of authority to decide a case on the merits, does the court retain jurisdiction for the limited purpose of considering a defendant's motion for fees, which is collateral to the underlying proceeding?"	027987.docx	LEGALCASE-00133267-LEGALCASE-00133268	Condensed, SA	0.8	839	0	1	14,873	21,876	9,029	
	Credit Car. v. Chambers, 960 S.W.2d 459	307A-486	The objective of every rule of practice is to obtain a just, fair, equitable, and impartial adjudication of the rights of the litigants under a liberal construction of such rules. Tex.R.Civ.P. 1; Greene, 824 S.W.2d at 700. Rule 169.3's primary purpose is to simplify trials and eliminate matters about which there is no real controversy, not to require a party to admit that he has no cause of action or ground of defense. 824 S.W.2d at 700; Sanders v. Harder, 148 Tex. 593, 227 S.W.2d 206, 208 (1950). Courts should not use the rules as a trap and should not constitute them in a manner that will prevent a litigant from presenting the truth to the trier of facts. Greene, 824 S.W.2d at 700. A party seeking to withdraw deemed admissions establishes "good cause" by showing that its failure to file was not intentional or in conscious disregard of its obligation to answer the requests; thus, even a slight excuse for failure to answer will suffice. City of Houston v. City of Houston, 1995 S.W.2d 204, 206 (Tex. App. Houston [1st Dist.] 1995, writ denied). See also McDonald, 1995 S.W.2d 206, 208 (Tex. App. Houston [1st Dist.] 1995, writ denied). Counsel's negligence does not necessarily constitute conscious indifference preventing a party from withdrawing its admissions. Greene, 824 S.W.2d at 700.	Party seeking to withdraw deemed admissions establish "good cause" by showing that its failure to file was not intentional or in conscious disregard of its obligation to answer the requests, and even a slight excuse for failure to answer will suffice. Vernon's Ann. Texas Rules Civ.Proc., Rule 169.	"Does the party seeking to withdraw deemed admissions establish good cause by showing that its failure to file was not intentional or in conscious disregard of its obligation to answer the requests, and even a slight excuse for failure to answer will suffice?"	Pertrial Procedure - Memo # 2976 - C - KG.docx	ROSS-00317672-KOSS-003317673	SA, Sub	0.76	0	0	1	1	1	
332	McDonnell v. United States, 136 S. Ct. 2355	63+13	Under the Court's precedents, a public official is not required to actually make a decision or take an action on a "question, matter, cause, suit, proceeding or controversy." It is enough that the official agree to do so. See Evans, 504 U.S., at 268, 112 S.Ct. 1881. The agreement need not be explicit, and the public official need not specify the means that he will use to perform his end of the bargain. Nor must the public official in fact intend to perform the "official act," so long as he agrees to do so. A jury could, for example, conclude that an agreement was reached if the evidence shows that the public official received a thing of value knowing that the thing of value was provided in exchange for the official's agreement to perform the "official act" in return. See <i>id.</i> It is up to the jury, under the facts of the case, to determine whether the public official agreed to perform an "official act" at the time of the alleged quid pro quo. The jury may consider a broad range of pertinent evidence, including the nature of the transaction, to answer that question.	It is up to the jury, under the facts of the case, to determine whether a federal bribery statute, which makes it a crime for a public official to demand anything of value in return for being influenced in the performance of any official act, at the time of the alleged quid pro quo; the jury may consider a broad range of pertinent evidence, including the nature of the transaction, to answer that question. 18 U.S.C.A. § 201(a)(3), (b)(2).	"In determining whether the defendant agreed to be influenced in the quid pro quo exchange, can the jury consider a broad range of pertinent evidence, including the nature of the transaction?"	01582.docx	LEGALCASE-00135119-LEGALCASE-00135121	Condensed, SA, Sub	0.51	0	1	1	1	1	
	Brock v. Am. Bond, Co., 179 Cal. App. 91-900	307A-485	Sometimes a party justifiably denies a request for admission based upon the information available at the time of the denial, but later learns of additional facts or acquires information which would have called for the request to be admitted. If the information had been known at the time of the denial, if such a party thereafter advises the party that propounded the request for admission that the denial was in error or should be modified, a court should consider this factor in assessing whether there were no good reasons for the denial. (See <i>Cumtison v. Warner Brother, Inc.</i> , 199 Cal. App. 2d 100, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000).	Where a party who justifiably denies request for admission based upon information available at time of denial, but who later learns of additional facts which would have called for request to be admitted if known at time of denial, and thereafter advises requesting party that denial was error that should be modified, such factors should be considered in assessing whether there were no good reasons for denial so as to warrant imposition of expenses incurred to prove truth of requested admission under S 2034(c), but if party stands on initial denial and then fails to come forward with evidence to support its denial, the court may impose expenses for denial so as to mandate imposition of expenses. With A.M. Cal.C.P. § 2034(c).	"Can a court be justified in finding no good reason for denial on its own motion to mandate imposition of expenses, if a party stands on initial denial and then fails to contest issue at trial?"	Pertrial Procedure - Memo # 3486 - C - NS.docx	ROSS-00317926-KOSS-003317927	Condensed, SA, Sub	0.17	0	1	1	1	1	1
334	Schindler v. AG Aero Distributors, 502 S.W.2d 581	307A-5117	The trial court, under Rule 169, Texas Rules of Civil Procedure, has considered discretion in refusing or granting a motion to dismiss. There is neither a reason nor denial within the time specified in the request. The trial judge, under the Rule, also has broad discretion in refusing or granting a motion of the non-answering party to permit the filing of an answer or denial to the request for admissions after the time thereof has expired. The ruling made by the trial court in the exercise of that discretion in either situation will be set aside only upon a showing of a clear abuse of discretion. 460 S.W.2d 538 (Tex. 3/26/72); <i>Fisher v. Houston 14th District 1958</i> , writ <i>aff'd</i> , 160 S.W.2d 538 (Tex. 3/26/72); <i>Hankins v. Haffa</i> , 469 S.W.2d 733 (Tex.Civ.App. Amarillo 1971, n.w.). However, where, as in the case at bar, the trial court, in the exercise of its discretion, permits the late filing of answers to a request for admissions and the answers are actually filed in the case, the permission to file such answers may not be revoked thereafter except upon a showing of good cause.	The ruling made by the trial court in the exercise of its discretion to refuse a motion to dismiss is not subject to review. The trial court has discretion in specifying in the request or in the refusing or granting of a motion of the non-answering party to permit the filing of an answer or denial to the request for admissions after the time thereof has expired will be set aside only upon showing of clear abuse. Rules of Civil Procedure, rule 169.	Does the trial court under the rule governing requests for admissions have considerable discretion in refusing or granting a motion to deem answers admitted?	GB0112.docx	LEGALCASE-00135905-LEGALCASE-00135906	Condensed, Order, SA, Sub	0.58	1	1	1	1	1	1

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences	
325	Shields v. Crump, 469 So. 2d 479	307A-716	We read these Supreme Court decisions to strongly indicate that a trial court's discretion should usually be exercised in favor of granting a continuance to a plaintiff who is no longer represented by counsel so as to afford the plaintiff an additional opportunity to obtain counsel and to have a day in court, even though the plaintiff has not been diligent in obtaining new counsel. In the two cited cases, as in the present case, the plaintiff's counsel was not represented by counsel and there was no indication of any particular reason for the defendant or to the court schedule if a continuance were to be granted.	Trial court's discretion should usually be exercised in favor of granting a continuance to plaintiff who is no longer represented by counsel, so as to afford plaintiff additional opportunity to obtain counsel and to have day in court, even though plaintiff has not been diligent in obtaining new counsel.	"Should a trial court's discretion usually be exercised in favor of granting continuance to a plaintiff who is no longer represented by counsel, so as to afford the plaintiff an additional opportunity to obtain counsel and to have a day in court, even though the plaintiff has not been diligent in obtaining new counsel?"	Pretial Procedure - Memo # 3295 - C - 3.docx	ROSS-003290745-ROSS-003290746	Condensed, SA	0.52	839	15,344	14,873	21,876	9,029	
326	Colonial Pipeline Co. v. Westlake Club, 112 Ga. App. 412	307A-723.1	Where, upon the call of a case and before a jury has been stricken, counsel for one of the parties makes prejudicial remarks in the presence of the panel of jurors from which a jury is thereafter selected to try the case, such conduct is not cause for a continuance but, at most, grounds for postponement of the trial until after the remarks have been withdrawn. See, e.g., Jones v. State, 185 Ga. 1138, 1152(b), 194 S.E. 527; Bowling v. Hathcock, 27 Ga.App. 6711, 107 S.E. 384; Fewell v. Gurt, 96 Ga.App. 535(1), 101 S.E.2d 181. While the words "continuance" and "postponement" may be virtually synonymous, a motion for a continuance generally implies a request that the case go over to another term, while the use of the word "postponement" implies a request that the case be adjourned to a later time during the same term. Black's Law Dictionary, p. 1530. A motion for a continuance is addressed to the same discretion of the trial court, and the court may exercise its discretion to grant or deny such a motion, even if it appears that the refusal to grant it was an abuse of the court's discretion. Lowe v. State, 185 Ga. 1132(2) supra, 194 S.E. 527. No abuse of discretion is shown where it does not appear that movant invoked the explicit remedy to which he was entitled, to wit, a postponement of the trial to another day in the same term or until other panels could be drawn from which to select a jury. The overruling of special ground 1 of the motion complaining of the denial of a motion for continuance made by counsel for defendant after the call of the case and the announcement of the panel for the condemnée "fatal to this victim" was, therefore, not error.	No abuse of discretion in denying continuance is shown where it does not appear that movant invoked explicit remedy to which he was entitled, to wit, postponement of trial to another day in same term or until other panels could be drawn from which to select jury.	"Is no abuse of discretion in denying continuance shown where it does not appear that a movant invoked an explicit remedy to which he was entitled, to wit, postponement of trial to another day in same term or until other panels could be drawn from which to select a jury?"	030303.docx	LEGALCASE-00136998-LEGALCASE-00136999	SA, Sub	0.85	0	0	1	1	1	
327	Brooks v. Am. Broad. Co., 179 Cal. App. 3d 500	307A-485	In determining whether a party had "no good reasons for the denial" of a request for admission found to have been of substantial importance, as to which a waiver of admission would have been of substantial importance, even though there is a valid excuse for the denial of the request, the court should consider whether the denial of the request was of substantial importance. At the time the request was denied the party making the denial may have reasonably viewed the subject matter of the request as admission to have been relatively trivial in light of the central issues as then developed by the parties. Thus, a court should assess whether at the time the request was denied it was reasonably possible for the party making the denial to have appreciated that the requested admission involved a central issue (as defined above) in the case.	Indetermining whether party had no good reasons for denial of request for admission found to have been of substantial importance so as to warrant imposing cost sanctions when trial court requested party on request for admission to have been of substantial importance, even though request was denied it was reasonably possible for party making denial to have appreciated that requested admission involved central issue in case. Wert's Ann.Cal.C.C.P. § 2034(c).	"Should a court assess whether at time request was denied it was reasonably possible for party making denial to appreciate that requested admission involved central issue in case, so as to warrant imposing cost sanctions when trial court requested party on request for admission found to have been of substantial importance?"	Pretial Procedure - Memo # 4179 - C - 3.docx	ROSS-003291020-ROSS-003291021	Condensed, SA, Sub	0.43	0	1	1	1	1	
328	Trahan v. State Through Dept of Health & Hosp., 663 So. 2d 242	307A-726	Trial court did not abuse its discretion in denying motion for continuance to plaintiffs who alleged that they were unable to complete discovery prior to hearing on motion for summary judgment, although hearing was continued previously at plaintiffs' request, they did not propound any discovery until five days before continued hearing, and they had nine months to propound discovery. Plaintiffs argue that they were not able to complete discovery prior to the November 7, 1994 hearing date on the motion for summary judgment, and therefore should have been allowed to complete discovery prior to the November 7, 1994 hearing date on the motion for summary judgment. Plaintiffs argue that they were not able to complete discovery prior to the November 7, 1994 hearing date on the motion for summary judgment, and therefore should have been allowed to complete discovery prior to the November 7, 1994 hearing date on the motion for summary judgment. Plaintiffs argue that they were not able to complete discovery prior to the November 7, 1994 hearing date on the motion for summary judgment, and therefore should have been allowed to complete discovery prior to the November 7, 1994 hearing date on the motion for summary judgment. Plaintiffs argue that they were not able to complete discovery prior to the November 7, 1994 hearing date on the motion for summary judgment, and therefore should have been allowed to complete discovery prior to the November 7, 1994 hearing date on the motion for summary judgment. 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330	Houston v. Houston, 64 Mass. App. Ct. 529	307A+486	Rule 36 admissions. Under Mass.R.Dom.R. 36(a), each matter of which an admission is requested is deemed admitted unless, within thirty days after service of the request, or within such shorter or longer time as the court may order, the party to whom the request is directed responds in accordance with the rule either by denying the matter for setting forth in detail why the answering party cannot truthfully admit or deny the matter) or objecting to it. Rule 36(b) provides that any matter admitted under the rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. 7 Paragraph (b) recognizes that "[t]he effect of the rule in a given case may be unduly prejudicial to the party to whom the request is directed, and it is essential to avoid a result in which form triumphs over substance." Reynolds Aluminum Bldg. Prods. Co. v. Leonard, 395 Mass. 255, 260, 480 N.E.2d 1 (1985) [involving Dial./ Mun.Cts.R. C.V.P. 36 (1975), which the court described as identical to Mass.R.C.V.P. 36, 365 Mass. 795 (1974)]. See Northboro Inn, LLC v. Treatment Plant Bd. of Westborough, 58 Mass.App.Ct. 670, 677, 792 N.E.2d 690 (2003). In the usual case, a judge "may ameliorate the effect of the rule when: (1) the presentation of the facts in support of the admission is not in dispute; (2) the admission is not prejudicial to him in maintaining his action or defense on the merits." Reynolds Aluminum Bldg. Prods. Co. v. Leonard, 395 Mass. at 260, 480 N.E.2d 1.	A judge may usually ameliorate the effect of the rule governing admissions when the presentation of the merits of the action will be advanced, and the party obtaining the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits. Rules Civ.Proc., Rule 36(b), 43A M.G.L.A.	"Can a judge usually ameliorate the effect of the rule governing admissions when the presentation of the merits of the action will be advanced, and when the party obtaining the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits?"	023936.docx	LEGALCASE-00140780-LEGALCASE-00140781	Condensed, SA, Sub 0.78	0	839	15,344	1	21,876	1	9,029
331	Cheney, Guo Liang Lu, 144 A.D.3d 793	307A+683	"When opposing a motion to dismiss a complaint pursuant to CPLR 3211(a)(6), on the ground that discovery on the issue of personal jurisdiction is unnecessary, plaintiffs need not make a prima facie showing of jurisdiction, but instead "need only demonstrate that facts may exist to exercise personal jurisdiction over the defendant." (Daniel B. Katz & Assoc. Corp. v. Midland Rumshore, LLC, 90 A.D.3d 977, 978, 937 N.Y.S.2d 236, quoting Ying Jun Chen v. Lei Shi, 19 A.D.3d 407, 407-408, 796 N.Y.S.2d 426; see Goel v. Ramchandran, 111 A.D.3d at 788, 975 N.Y.S.2d 428). If it appears "that facts essential to justify the exercise of personal jurisdiction exist, the court may postpone resolution of the issue of personal jurisdiction (CPLR 3211(d); see Melia "the finer v. Killington, Ltd., 119 A.D.3d 912, 915, 990 N.Y.S.2d 561; Goel v. Ramchandran, 111 A.D.3d at 788, 975 N.Y.S.2d 428; Daniel B. Katz & Assoc. Corp. v. Midland Rumshore, LLC, 90 A.D.3d at 978, 937 N.Y.S.2d 236).	When opposing a motion to dismiss a complaint for lack of personal jurisdiction on the ground that discovery on the issue of personal jurisdiction is unnecessary, plaintiffs need not make a prima facie showing of jurisdiction, but instead need only demonstrate that facts may exist to exercise personal jurisdiction over the defendant. McKimney's CPLR 3211(a)(6).	"When opposing a motion to dismiss a complaint for lack of personal jurisdiction on the ground that discovery on the issue of personal jurisdiction is unnecessary, plaintiffs need not make a prima facie showing of jurisdiction?"	Pretial Procedure - Memo # 6045 - C - VA.docx	LEGALCASE-00031537-LEGALCASE-00031538	SA, Sub	0.67	0	0	1	1	1	
332	Manfield, de Benavides, 693 S.W.2d 500	306+50	When the tripartite is done in bad faith, the measure of damages is "the value of the things seized at the time of seizure without making deduction for the cost of labor and other expenses incurred in committing the wrongful act... or for any value he may have added to the mineral by his labor". Cage Brothers v. Whiteman, 139 Tex. 522, 363 S.W.2d 638, 642 (1962).	When tripartite is done in bad faith, measure of damages is value of things mined, time of seizure without making deduction for cost of labor and other expenses incurred in committing wrongful act or for any value trespasser may have added to minerals by his labor.	% the measure of damages for bad faith tripartite is the value of the thing mined at the time of seizure without making deduction for the cost of labor and other expenses incurred in committing the wrongful act?	021420.docx	LEGALCASE-00143578-LEGALCASE-00143579	Condensed, SA	0.27	0	1	0	1	1	1
333	Mitchell v. Boussion, 29 Mich. App. 222	307A+726	On the date of trial defendant appeared, represented by an associate of his counsel, who explained that his sole purpose in appearing was to inform the court of the facts of the case and to request that the court grant a continuance to enable defendant to obtain another lawyer. The trial judge, taking into account the fact that the case had been set for trial on four previous occasions, and that each time a continuance had been granted, and that this was the second time defendant has sought to delay trial because of substitution of counsel, denied the motion. The sole question on appeal is whether the trial court's denial of that motion was an abuse of discretion. Order setting aside for trial a day certain, which gave defendant ample time to be represented by a lawyer, was proper. Defendant's motion for a continuance to enable defendant to obtain another lawyer, was not an abuse of discretion where defendant had received four previous adjournments.	Order setting case for trial on a day certain, which gave defendant ample time to be prepared to defend negligence action, rather than granting trial on a day that gives the defendant ample time to prepare to defend negligence action, rather than granting continuance?	"Would it be an abuse of discretion for the order setting case for trial on a day that gives the defendant ample time to prepare to defend negligence action, rather than granting continuance?"	033886.docx	LEGALCASE-00142855-LEGALCASE-00142856	Condensed, SA, Sub	0.68	0	1	1	1	1	1
334	Verplough v. Gagliano, 396 Ill. App. 3d 1041	307A+560	"There is no specific time limitation provided by Rule 103(b). Rather, a court must consider the passage of time in relation to all the other facts and circumstances of the case, including the nature of the claim, the complexity of the issues, the availability of witnesses, and the need for a fair trial. In Wormick v. Jackson County Nursing Home, 137 Ill.2d 371, 377, 448 Ill. Dec. 719, 561 N.E.2d 25, 27 (1990). Five to seven months between filing and service of process seems to be the minimum delay generally needed to make a prima facie showing of failure to exercise reasonable diligence. 3 R. Michale, Illinois Practice" 8.7, at 45 (Supp.2007).	Courts consider a number of factors when determining whether to grant a motion to dismiss for lack of diligence in obtaining service of process, including: (1) the nature of the claim; (2) the complexity of the issues; (3) the availability of witnesses; (4) the need for a fair trial; (5) the passage of time; (6) the defendant's whereabouts could have been ascertained; (7) special circumstances which would affect plaintiff's efforts; and (8) actual service on the defendant. Sup Ct.Rules, Rule 103(b).	Should courts consider a number of factors when determining whether to grant a motion to dismiss for lack of diligence?	Pretial Procedure - Memo # 6388 - C - Div.docx	ROSS-003329593-ROSS-003329594	SA, Sub	0.55	0	0	1	1	1	1
335	Am. Mfg. Co. v. City of St. Louis, 270 Mo. 40	371+2005	On the other hand, the state may exercise its sovereign right with respect to all persons, things, and business activities which exist under the protection of its laws, and as is said by the same distinguished author (Id.). "Unless restrained by provisions of the federal Constitution, the power of the state as to the mode, form, and extent of taxation is unlimited, where the subjects to which it applies are within her jurisdiction."	State may exercise sovereign right of taxation with respect to all persons, things, and business activities which exist under protection of its laws, its power being unlimited as to mode, form, and extent of taxation, unless restrained by federal Constitution, where subjects to which it applies are within jurisdiction.	"Can a state exercise sovereign right of taxation with respect to all persons, things, and business activities which exist under protection of its laws in any mode and form?"	045297.docx	LEGALCASE-00144607-LEGALCASE-00144608	Condensed, SA, Sub	0.27	0	1	1	1	1	1

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Between Opinion and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
336	Montgomery v. Smithline Bldg. Corp., 310 S. 2d 941	307A+560	Indeed, this Court has stated that, although there is no requirement of a motion to be made to the trial court, the better method to be used in future cases would be for the plaintiff to move the trial court to enter a judgment of non pro where it finds the defendant's failure to prosecute was willful and in bad faith. In the instant case, the plaintiff failed to move the trial court to enter a judgment of non pro where it finds the defendant's failure to prosecute was willful and in bad faith. The plaintiff must then appear and attempt to show good cause why process was not served within the 120-day period for service. Rules Civ. Proc., Rule 4(b).	Ordinarily, under the civil procedure rule regarding service of process, if 120 days have elapsed after the filing of the complaint, a court must notify the plaintiff to appear and attempt to show good cause why process was not served within the 120-day period for service. Rules Civ. Proc., Rule 4(b).	"Under the civil procedure rule regarding service of process, if 120 days have elapsed after the filing of the complaint, a court must notify the plaintiff to appear and attempt to show good cause why process was not served within the 120-day period for service. Rules Civ. Proc., Rule 4(b).	035255.docx	LEGALCASE-00145971-LEGALCASE-00145972	SA, Sub	0.62	839	15,344	14,873	21,876	9,079
337	Stratton v. Shower, 351 S.W.3d 941	307A+581	In <i>Toler</i> , the Court further emphasized that the trial court is to consider the factors set forth in <i>Ward</i> , 809 S.W.2d 717, when making a determination as to whether to order dismissal pursuant to CR 41.02. Those factors include: "(1) the extent of the party's personal responsibility; (2) the history of the party's conduct; (3) whether the attorney's conduct was willful and in bad faith; (4) the meritoriousness of the claim; (5) prejudice to the other party; and (6) the availability of alternative sanctions." <i>Id.</i> at 351 (citing <i>Ward</i> , 809 S.W.2d at 719). These same factors are relevant to the trial court's decision to grant a summary judgment for the defendant. In <i>Ward</i> , the fact that the plaintiff failed to request summary judgment was a factor in the trial court's decision to grant summary judgment for the defendant. The trial court's decision to grant summary judgment for the defendant was based on the plaintiff's failure to timely respond to a discovery request and, consequently, the identification of an expert witness. Thus, the law set forth in <i>Ward</i> and, as clarified in <i>Toler</i> , is controlling when the court considers the issue of involuntary dismissal with prejudice.	Factors a trial court is to consider in ruling on the involuntary dismissal of a case for failure to prosecute or to comply with discovery rules include: (1) The extent of the party's personal responsibility; (2) the history of the party's conduct; (3) whether the attorney's conduct was willful and in bad faith; (4) the meritoriousness of the claim; (5) prejudice to the other party; and (6) the availability of alternative sanctions. Rules Civ. Proc., Rules 37.02, 41.02.	"Should the trial court, in the alternative sanctions, be considered by court, in ruling on the involuntary dismissal of a case for failure to prosecute or to comply with discovery rules?"	Perital Procedure - Memo #8802 - C - SGC_58367.docx	ROSS-00328641-ROSS-00390442	SA, Sub	0.54	0	0	1	1	
338	Temple v. Guilford Specialty Mfg. Ins. Co., 330 S.W.3d 318	307A+581	A trial court may dismiss a case for want of prosecution under rule 165a for (1) failure to appear or (2) failure to comply with the supreme court time standards. In addition, a trial court may dismiss a case for want of prosecution under its inherent power to control its docket if the case has not been prosecuted with diligence. When deciding whether to dismiss a case for want of prosecution, the trial court may consider the entire history of the case, including the amount of activity in the case, the length of time the case was on file, requests for a trial date, and the existence of reasonable excuses for delay. No single factor is dispositive.	When deciding whether to dismiss a case for want of prosecution, the trial court may consider the entire history of the case, including the amount of activity in the case, the length of time the case was on file, requests for a trial date, and the existence of reasonable excuses for delay. No single factor is dispositive.	"Should a court consider the entire history of the case including requests for a trial date, and the existence of reasonable excuses for delay, when deciding whether to dismiss a case for want of prosecution?"	035937.docx	LEGALCASE-00149354-LEGALCASE-00149355	Condensed SA	0.64	0	1	0	1	
339	Gohel v. Montgomery Hosp., 698 A.2d 653	307A+581	To determine whether there existed a reasonable explanation for the period of delay, the trial court properly applied the three-prong test of <i>MacGregor v. Rich</i> , 941 S.W.2d 776 (Tex. 1997). The trial court may enter a judgment of non pro where it finds: 1) failure to proceed diligently with reasonable promptitude; 2) a lack of a compelling reason for the delay; and 3) the delay has caused some prejudice to the adverse party, which will be presumed in cases where delay exceeds two years. <i>Id.</i> at 357, 603 A.2d at 1008. Appellants are correct in their assertion that due diligence may be demonstrated by discovery activity not reflected on the docket. The period of delay in this case was approximately two years. See <i>Art Medics, Inc. v. Aries Medical, Inc.</i> , 458 P.2d 569, 589 A.2d 957 (1997).	Trial court may enter judgment of non pro where it finds failure to proceed diligently with reasonable promptitude, lack of compelling reason for the delay, and the delay has caused some prejudice to the adverse party, which will be presumed in cases where delay exceeds two years. Rules Civ. Proc., Rule 305.1(b), 42.9A.C.S.A.	"Can court enter judgment of non pro where it finds failure to proceed diligently with reasonable promptitude, lack of compelling reason for the delay, and delay has caused some prejudice to adverse party?"	037083.docx	LEGALCASE-00150804-LEGALCASE-00150805	Condensed SA, Sub	0.65	0	1	1	1	1
340	Christin v. Christian, 985 S.W.2d 513	307A+581	A motion may be dismissed for want of prosecution if the movant fails to prosecute the motion with due diligence. <i>Rick v. Mayad</i> , 603 S.W.2d 773, 776 (Tex. 1990). To decide the due diligence issue, the trial court may consider the entire history of the case, including whether the movant has requested a hearing, the amount of activity in the case, the passage of time, and the movant's excuses for the delay. <i>Ozawa v. Southwest Bldg. Clinical Lab.</i> , 765 S.W.2d 900, 902 (Tex. App. San Antonio 1989, writ denied). No single factor is dispositive, <i>id.</i> , and due diligence is generally a question of fact. <i>MacGregor v. Rich</i> , 941 S.W.2d 776, 757 (Tex. 1997).	To decide whether party prosecuted motion with due diligence, trial court may consider entire history of case, including whether movant has requested hearing, amount of activity in case, passage of time; and movant's excuses for delay.	"To decide the due diligence issue, may the trial court consider the entire history of the case, including whether the movant has requested a hearing, the amount of activity in the case, the passage of time, and the movant's excuses for delay?"	Perital Procedure - Memo #8880 - C - TM_06562.docx	ROSS-00329203-ROSS-00329204	Condensed SA, Sub	0.64	0	1	1	1	1

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341	<i>Poala v. Howard Univ., 147 A.3d 267</i>	307A-479	This court reviews de novo a dismissal under Super. Ct. Civ. R. 12(b)(6). To bring a complaint that pleads enough facts to state a claim to relief that is plausible on its face, a plaintiff must allege enough facts to state a claim to relief that is plausible on its face. In this case, the court found that the complaint alleged D.C. Super. Ct. R. Civ. P. 12(b)(6).	To survive a 12(b)(6) motion to dismiss, should a complaint plead enough facts to state a claim to relief that is plausible on its face?	037937.docx	LEGALCASE-00153079-LEGALCASE-00153080	SA, Sub	0.84	839	0	15,344	14,873	21,876	9,079
342	<i>UMC Dwa. v. D.C., 120 A.3d 37</i>	307A-481	Thus, when a defendant makes a "factual" (as opposed to a "legal") attack on the plaintiff's complaint under Super. Ct. Civ. R. 12(b)(1), the trial court may "conduct an independent review of the evidence submitted by the parties, including affidavits, to resolve factual disputes concerning whether subject-matter jurisdiction exists." In Grayson, this court suggested that a court should not resolve factual disputes without holding an evidentiary hearing. We have questioned, however, a court's authority to conduct such a review outside the hearing. "[I]f...the plaintiff's standing does not adequately appear from all materials of record, the complaint must be dismissed."	For purposes of ruling on a motion to dismiss for want of standing, when a defendant makes a factual, as opposed to a legal, attack on the plaintiff's complaint, the trial court may conduct an independent review of the evidence submitted by the parties, including affidavits, to resolve factual disputes concerning whether subject-matter jurisdiction exists. Civil Rule 12(b)(1).	"When a defendant makes a factual attack on the plaintiff's complaint, can the trial court conduct an independent review of the evidence submitted by the parties, including affidavits?"	038584.docx	LEGALCASE-00154047-LEGALCASE-00154048	SA, Sub	0.51	0	0	1	1	1
343	<i>Hague v. Town of E. Haven Bd. of Police, 647 659</i>	307A-479	"When a trial court decides a jurisdictional question raised by a pretrial motion to dismiss on the basis of the complaint alone, it must consider the facts alleged in the complaint and the facts alleged in the complaint regarding a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader..."	When a trial court decides a jurisdictional question raised by a pretrial motion to dismiss on the basis of the complaint alone, it must consider the facts alleged in the complaint and the facts alleged in the complaint regarding a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader.	"When a trial court decides a jurisdictional question raised by a pretrial motion to dismiss on the basis of the complaint alone, it must consider the facts alleged in the complaint and the facts alleged in the complaint regarding a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader?"	Pretrial Procedure - Memo # 9394 - C-PC_031047.docx	ROSS-003293704-ROSS-00329371	Condensed SA	0.01	0	1	0	1	1
344	<i>In re ExxonMobil Corp., 133 S.W.3d 605</i>	15A-2161	When the Legislature has given exclusive jurisdiction to an administrative body, a litigant's failure to exhaust all administrative remedies before seeking judicial review of the administrative body's action deprives the court of jurisdiction to review the action. The court must dismiss such claims without prejudice. <i>Subaru</i> , 84 S.W.3d at 223; <i>Cash America</i> , 35 S.W.3d at 15. At the hearing on relators' pleas to the jurisdiction, the Yoakum County Appraisal District chief appraiser testified she had held that position since its creation, and the taxing units had never submitted a challenge to the appraisal roll or filed a suit against the appraisal district.	When the Legislature has given exclusive jurisdiction to an administrative body, a litigant's failure to exhaust all administrative remedies before seeking judicial review of the administrative body's action deprives the court of jurisdiction to review the action. The court must dismiss such claims without prejudice.	Does a litigant's failure to exhaust all administrative remedies before seeking judicial review of the administrative body's action deprive the court of subject matter jurisdiction over claims within the body's exclusive jurisdiction?	Pretrial Procedure - Memo # 10367 - C-SN_62092.docx	ROSS-003279074-ROSS-003279075	Condensed SA	0.48	0	1	0	1	1
345	<i>Scovill Exswaters v. Sure-Snap Corp., 207 Ga. App. 539</i>	307A-485	To demonstrate that the court lacks jurisdiction, defendant may raise matters not contained in the pleadings. However, when the outcome of the motion depends on undisputed facts, it must be accompanied by supporting affidavits or citations to evidentiary material in the record, and to the extent that defendant's evidence controverts complaint's allegations, plaintiff may not rely on mere allegations, but must also submit supporting affidavits or documentary evidence. <i>Uniform Superior Court Rule 6.1</i> .	When outcome of motion to dismiss for lack of personal jurisdiction depends on undisputed facts, it must be accompanied by supporting affidavits or citations to evidentiary material in the record, and to the extent that defendant's evidence controverts complaint's allegations, plaintiff may not rely on mere allegations, but must also submit supporting affidavits or documentary evidence. <i>Uniform Superior Court Rule 6.1</i> .	Can a plaintiff rely on mere allegations in controverting the allegations of the complaint but also submit supporting affidavits or documentary evidence?	Pretrial Procedure - Memo # 10434 - C-KG_62382.docx	ROSS-003319001	Condensed SA	0.33	0	1	0	1	1
346	<i>Chromalloy Am. Corp. v. Elyria Foundry Co., 955 S.W.2d 1</i>	338A-485	There are exceptions to this rule. A dismissal without prejudice may operate to preclude the party from bringing another action for the same cause and may be res judicata of what the judgment actually decided; appeal from such dismissal can be taken where dismissal has practical effect of terminating litigation in form cast or in plaintiff's chosen forum.	Dismissal without prejudice may operate to preclude party from bringing another action for same cause and may be res judicata of what judgment actually decided; appeal from such dismissal can be taken where dismissal has practical effect of terminating litigation in form cast or in plaintiff's chosen forum.	Can a dismissal without prejudice operate to preclude a party from bringing another action for the same cause and can be res judicata of what the judgment actually decided?	025761.docx	LEGALCASE-00158737-LEGALCASE-00158738	Condensed SA	0.68	0	1	0	1	1

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347	Bullock v. Apartment Corp. v. Dingold, 37 A.D.3d 635	307A-457	A case stricken from the trial calendar pursuant to CPLR 3404 and subsequently dismissed after one year may be restored to the trial calendar if the plaintiff demonstrates a meritorious cause of action, a reasonable excuse for the delay in seeking restoration of the action to the trial calendar, a lack of prejudice to the defendant, and a lack of prejudice to the plaintiff.	Case stricken from the trial calendar and subsequently dismissed after one year may be restored to the trial calendar if the plaintiff demonstrates a meritorious cause of action, a reasonable excuse for the delay in seeking restoration of the action to the trial calendar, a lack of prejudice to the defendant, and a lack of prejudice to the plaintiff.	Can a case stricken from the trial calendar and subsequently dismissed after one year be restored to the trial calendar if the plaintiff demonstrates a meritorious cause of action?	Pertrial Procedure - Memo 11297 - C - VP.docx	LEGALCASE-00049775-LEGALCASE-00049776	Condensed, SA, Sub	0.59	839	15,344	14,873	21,876	9,029		
348	People v. Smith, 128 Misc.2d 733	110-1156.2	The defendant contends that this sentence is excessive, and does not claim that the term limit is unauthorized by statute or that his constitutional rights have been violated. We have held that the nature, character and extent of the penalties for a particular criminal offense are matters for the legislature, which may prescribe definite terms of imprisonment, or specific amounts as fines or the minimum and maximum limits thereof. Where it is contended that the punishment imposed in a particular case is excessive, though within the limits prescribed by the legislature, the court should not disturb the sentence unless it clearly appears that the penalty constitutes a great departure from the fundamental law and its spirit and purpose, or that the penalty is manifestly in excess of the proscription of section 11 of article 1 of the Illinois constitution, S.H.A. which requires that all penalties shall be proportioned to the nature of the offense. People v. Dixon, 400 Ill. 449, 81 N.E.2d 257; People v. Mundo, 326 Ill. 324, 137 N.E. 167; People v. Lloyd, 314 Ill. 23, 136 N.E. 563; People v. Elliott, 272 Ill. 392, 112 N.E. 300.	Where it is contended that the punishment imposed in a particular case is excessive, though within the limits prescribed by the legislature, the court should not disturb the sentence unless it clearly appears that the penalty constitutes a great departure from the fundamental law and its spirit and purpose, or that the penalty is manifestly in excess of the proscription of section 11 of article 1 of the Illinois constitution, S.H.A. which requires that all penalties shall be proportioned to the nature of the offense. People v. Dixon, 400 Ill. 449, 81 N.E.2d 257; People v. Mundo, 326 Ill. 324, 137 N.E. 167; People v. Lloyd, 314 Ill. 23, 136 N.E. 563; People v. Elliott, 272 Ill. 392, 112 N.E. 300.	Can a sentence be disturbed on the basis that it is excessive if it is within the limitations prescribed by the legislature but also deemed to be grossly at variance with the purpose and spirit of the law?	012564.docx	LEGALCASE-00161462-LEGALCASE-00161464	Condensed, SA, Sub	0.55	0	1	1	1	1	1	
349	People v. Finnegan, 43 Misc. 3d 34	3-771-338	The District Court also correctly declined to charge the jury with the defense of justification regarding the count of harassment in the second degree pursuant to Penal Law " 35.15(1), by which "a person may use physical force upon another person when and to the extent he or she reasonably believes such to be necessary to defend ... a third person from what he or she reasonably believes to be the use or imminent use of unlawful physical force by such other person" (emphasis added). Viewing the evidence in the light most favorable to defendant, his actions occurred as a particular play during the scrimmage had ended, and prior to the commencement of the next play.	District Court correctly declined to charge jury with defense of justification regarding defendant's count of harassment in the second degree pursuant to statute by which a person may use physical force upon another person when and to the extent he reasonably believes such to be necessary to defend third person from what he reasonably believes to be use or imminent use of unlawful physical force by such other person; to extent that defendant, who was coach of youth football team, reasonably believed that he was defending 10-year-olds that he was coaching from use of unlawful physical force by 11-year-old from another team, such use of force was no longer imminent, as defendant's actions occurred as particular play during scrimmage had ended, and prior to commencement of next play, and defendant had alternatives to running across field and knocking victim down, such as calling time out or ordering his team off field. McKinney's Penal Law SS 35.15(1), 240.26(1).	Under the defense of justification can a person use physical force to defend a third person from imminent unlawful force?	040929.docx	LEGALCASE-00161048-LEGALCASE-00161049	Condensed, SA, Sub	0.3	0	1	1	1	1	1	
350	Fennan v. Davis, 371 U.S. 178	170A-833	Rule 15(1) declares that leave to amend "shall be freely given when justice so requires; this mandate is to be heeded. See generally, 3 Moore, Federal Practice (2d ed. 1948), § 15.08, 15.10. If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of introduction of the amendment, (1) the court should grant leave to amend, and (2) the leave sought should, on the other hand, be "freely given."	Leave to amend complaint should be freely given in absence of any apparent or declared reasons such as undue delay, bad faith or dilatory motive on part of movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to opposing party by virtue of introduction of the amendment, and (2) the leave sought should, on the other hand, be "freely given."	In the absence of any apparent reason, such as undue delay, bad faith, or dilatory motive on the part of the movant, should the district court grant a party's motion for leave to amend after issuing an order dismissing the complaint with leave to amend?	040333.docx	LEGALCASE-00162362-LEGALCASE-00162363	Order, SA	0.49	1	0	0	1			
351	Coldough v. Johnson, 115 A.D.2d 58	115A-451.1	Justly attaches once the jury is sworn (Crist v. Bretz, 437 U.S. 28, 38 S.Ct. 2156, 57 L.Ed.2d 242 (1978)), and cannot be disposed unless the initial proceeding was inconclusively terminated in circumstances justifying such termination. Circumstances justifying the declaration of a mistrial following which a new trial of the same indictment may be granted include: (1) the defendant's failure to move for a mistrial during the trial of a fair trial (CPL 280.10(1)), or gross misconduct by the defendant or a juror (CPL 280.10(2)), the only ground upon which a new trial may be had is "when it is physically impossible to proceed with the trial in conformity with law." (CPL 280.10(3)). Put somewhat differently, when the defendant has not acted in a grossly improper way and has not requested or explicitly consented to a second proceeding, retrial is permitted only where "there is a manifest necessity for [the mistrial], or the ends of public justice would otherwise be defeated."	Absent prejudicial error depriving defendant of fair trial, or gross misconduct by defendant or juror, the only ground upon which new trial may be had after declaration of mistrial is when it is physically impossible to proceed with trial in conformity with law. McKinney's CPL 280.10, subd. 1, 3; McKinney's Const. Art. 1, § 6; U.S.C.A. Const. Amend. 5.	"Absent prejudicial error depriving defendant of fair trial, or gross misconduct by defendant or juror, is the only ground upon which new trial may be had after declaration of mistrial when it is physically impossible to proceed with trial in conformity with law?"	Double Jeopardy - Memo 416 - C - TL 66986.docx	RCS-003283623-RCS-003283610	SA, Sub	0.64	0	0	1	1			
352	Williams v. D'Angelo, 24 A.D.3d 538	307A-457	A case marked off the trial calendar pursuant to CPLR 3404 and subsequently dismissed after one year may be restored to the trial calendar if the plaintiff demonstrates a meritorious cause of action, a reasonable excuse for the delay in seeking restoration of the action, a lack of prejudice to the defendant, and a lack of prejudice to the plaintiff.	A case marked off the trial calendar and subsequently dismissed after one year may be restored to the trial calendar provided that the plaintiff demonstrates a meritorious cause of action, a reasonable excuse for the delay in prosecuting the action, a lack of prejudice to the defendant, and a lack of prejudice to the plaintiff.	Can a case marked off the trial calendar and subsequently dismissed after one year be restored to the trial calendar if the plaintiff demonstrates a meritorious cause of action?	Pertrial Procedure - Memo 11948 - C - TM 67023.docx	RCS-003294680-RCS-003294681	SA, Sub	0.64	0	0	1	1	1		

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Between Headnote and Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
353	Jake F. v. Blainew-Old Blainew-Old, 304 A.2d 104	141E-888(3)	School district did not breach its duty to provide adequate supervision, with respect to assault on student by fellow student, although assault's behavior and single, remote incident of fighting two years and nine months prior, district had no knowledge or actual or constructive notice of prior conduct similar to the assault. Here, the defendant established, prima facie, that the assault was an unforeseeable act that, without sufficiently specific knowledge or notice, could not reasonably have been anticipated by the defendant (see Brandy v. Eden Cent. School Dist., 15 N.J.3d 297, 302, 307 N.J.5237 35, 394 N.L.2d 304).	School district did not breach its duty to provide adequate supervision, with respect to assault on student by fellow student, although assault's behavior and single, remote incident of fighting two years and nine months prior, district had no knowledge or actual or constructive notice of prior conduct similar to the assault.	Do school districts breach their duty to supervise students when students are injured on school premises?	01.7590.docx	LEGALASE-001.64.505- LEGALASE-001.64.508	Condensed, SA, Sub	0.43	839	15,344	14,873	21,876	9,079
354	Levine v. Agius, 28 A.D.3d 719	307A-657	"A case marked off the trial calendar pursuant to CPLR 3404 and subsequently dismissed after one year may be restored to the trial calendar, provided that the plaintiff demonstrates a meritorious cause of action, a reasonable excuse for the delay in prosecuting the action, lack of intent to abandon the action, and a lack of prejudice to the defendant" (Williams v. D'Angelo, 24 A.D.3d 538, 806 N.Y.2d 628; see Sheridan v. 2087 A.D.2d 126, 131, 731 N.Y.S.2d 163). The Supreme Court should have granted the plaintiff's motion and denied the defendant Agius's cross motion. The Supreme Court found unreasonable the excuse proffered by the plaintiff, namely, that if the matter was restored to the calendar immediately, the action would likely have come up for trial again at a time when all of the parties were still engaged in other cases.	Case marked off trial calendar and subsequently dismissed after one year may be restored to trial calendar provided that plaintiff demonstrates meritorious cause of action, reasonable excuse for delay in prosecuting action, lack of intent to abandon action, and lack of prejudice to defendant. McKinney's CPLR 3404.	Can a case marked off the trial calendar and subsequently dismissed after one year be restored to trial calendar provided that the plaintiff demonstrate a meritorious cause of action?	Perital Procedure-- Memo 12117 - C- VP_67399.docx	R055-003243301-R055-003281302	Condensed, SA	0.65	0	1	0	1	1
355	State v. Saver, 538 N.W.2d 512	113H+105	But the Johnson Court did not address retrial of charges arising from the same behavioral incident that (1) had already been charged, (2) had been tried with the charge to which the defendant pleaded guilty, and (3) were not disposed of at that trial. The court noted that: [A] proper use of [section 609.033] contemplates one prosecution for all offenses resulting from a single behavioral incident with all such offenses charged as separate counts. In such a single prosecution, no plea or dismissal of any offense charged will prevent the prosecution from continuing until all offenses are disposed of. The court also noted that: [W]e believe this statement in [emphasis added] [footnote omitted]. We believe this statement in Johnson is clear: A defendant who is acquitted or convicted of one among several criminal charges, tried in a single proceeding and arising from a single course of conduct, may be retried for any charges on which the jury did not reach a verdict because those charges have not been "disposed of" by conviction, acquittal, entry of a plea, or dismissal.	A defendant who is acquitted or convicted of one among several criminal charges, tried in a single proceeding and arising from a single course of conduct, may be retried for any charges on which the jury did not reach a verdict because those charges have not been "disposed of" by conviction, acquittal, entry of a plea, or dismissal.	"Can a defendant who is acquitted or convicted of one among several criminal charges, tried in a single proceeding and arising from a single course of conduct, be retried for any charges on which the jury did not reach a verdict because those charges have not been "disposed of" by conviction, acquittal, entry of a plea, or dismissal."	Double Jeopardy-- Memo 788 - C- SB_67803.docx	R055-003243301-R055-003295852	Condensed, SA	0.68	0	1	0	1	1
356	Stanley v. Superior Court, 200 Cal. App. 4th 265	113H+1	The policies and protections underlying or afforded by double jeopardy principles include: (1) protecting the defendant from being subjected to the embarrassment, expense, ordeal, and anxiety of repeated trials, (2) preserving the finality of judgments, (3) precluding the government from retrying the defendant armed with new evidence and knowledge of defense tactics, (4) recognizing the defendant's right to have trial completed by a particular tribunal, and (5) precluding multiple punishment for the same offense. U.S.C.A. Const.Amend. 5, West's Ann.Cal. Const. Art. I, § 15.	The policies and protections underlying or afforded by double jeopardy principles include: (1) protecting the defendant from being subjected to the embarrassment, expense, ordeal, and anxiety of repeated trials, (2) preserving the finality of judgments, (3) precluding the government from retrying the defendant armed with new evidence and knowledge of defense tactics, (4) recognizing the defendant's right to have trial completed by a particular tribunal, and (5) precluding multiple punishment for the same offense. U.S.C.A. Const.Amend. 5, West's Ann.Cal. Const. Art. I, § 15.	What are the policies and protections afforded by double jeopardy principles?	Double Jeopardy-- Memo 802 - C- RF_67691.docx	R055-003243301-R055-003295852	SA, Sub	0.25	0	0	1	1	1
357	Taylorville City v. Adams, 145 P.3d 1161	113H+100.1	Further, the Supreme Court also discussed the distinction between representation of a defendant after a conviction is overturned on appeal and representation of a defendant after he is acquitted of a charge in the defendant's criminal case. The court stated that: [W]hen a defendant is convicted, terminate the initial jeopardy. This is so whether they are "express or implied by a conviction on a lesser included offense." "Id. (citation omitted). Thus, whether the trial is to a jury or to the bench, subjecting the defendant to postacquittal (re)trials is precluded, going to guilt or innocence violates the Double Jeopardy Clause." Smalls v. Pennsylvania, 476 U.S. 140, 145, 106 S.Ct. 1745, 90 L.Ed.2d 116 (1986) (citation omitted). Accordingly, contrary to the arguments of the defendant, the defendant's conviction and retrial after an acquittal did not violate the Double Jeopardy Clause.	Acquittals, unlike convictions, terminate the initial jeopardy, whether they are express or implied by a conviction on a lesser included offense; thus, whether the trial is to a jury or to the bench, subjecting the defendant to postacquittal (re)trials is precluded, going to guilt or innocence violates the Double Jeopardy Clause?	"Whether the trial is to a jury or to the bench, does subjecting the defendant to post acquittal fact-finding proceedings going to guilt or innocence violate the Double Jeopardy Clause?"	01.5687.docx	LEGALASE-001.66.405- LEGALASE-001.66.406	SA, Sub	0.6	0	0	1	1	1
358	Pieroni v. State, 398 S.W.3d 406	113H+486	Although a retrial is absolutely prohibited when a trial ends in an acquittal or a conviction, a retrial may not be "automatically barred when a criminal proceeding is terminated without finally resolving the merits of the charges against the accused." Washington, 434 U.S. at 505, 98 S.Ct. 824. Under such circumstances, a retrial over the objection of a defendant is permitted only when the prosecutor demonstrates "manifest injustice." The Supreme Court has stated that: [W]hen a jury verdict may be tainted by bias." Id. at 1516, 98 S.Ct. 824. A trial court's decision to declare a mistrial is reviewed for an abuse of discretion, but "the trial court's discretion to declare a mistrial based on manifest necessity is limited to, and must be justified by, extraordinary circumstances." See Ex parte Garza, 337 S.W.3d 903, 909 (Tex.Crim.App.2011).	Although a retrial is absolutely prohibited when a trial ends in an acquittal or a conviction, a retrial may not be "automatically barred when a criminal proceeding is terminated without finally resolving the merits of the charges against the accused." Washington, 434 U.S. at 505, 98 S.Ct. 824. Under such circumstances, a retrial over the objection of a defendant is permitted only when the prosecutor demonstrates "manifest injustice." The Supreme Court has stated that: [W]hen a jury verdict may be tainted by bias." Id. at 1516, 98 S.Ct. 824. A trial court's decision to declare a mistrial is reviewed for an abuse of discretion, but "the trial court's discretion to declare a mistrial based on manifest necessity is limited to, and must be justified by, extraordinary circumstances." See Ex parte Garza, 337 S.W.3d 903, 909 (Tex.Crim.App.2011).	"Although a retrial is automatically barred when a trial ends with an acquittal or a conviction, is the same true when a criminal proceeding ends before a final resolution of the merits of the charges against the accused is reached?"	01.0014.docx	LEGALASE-001.66.863- LEGALASE-001.66.864	SA, Sub	0.52	0	0	1	1	1
359	McC Bulwain Fire, Co. v. DiNagato, Rosario & Venila, 364 Ill. App. 3d 6	307A-680	Bulwain's claim against Cogliandro, a section 2750.9 motion to dismiss, admits the legal sufficiency of the complaint and raises defects, defenses or other affirmative matters, such as the untimeliness of the complaint, which appear on the face of the complaint or are established by external submissions which act to defeat the plaintiff's claim, thus enabling the court to dismiss the complaint after considering issues of law or easily proved issues of fact." Lujanek v. Martin, 1 Kelly Issues of law or easily proved issues of fact." Lujanek v. Martin, 1 Kelly Ill. Ct. 325 Ill App.3d 1135, 1141, 259 Ill.Dec. 386, 159 N.E.2d 66, 69 (2001).	A motion for involuntary dismissal based on certain defects or defenses admits the legal sufficiency of the complaint and raises defects, defenses, or other affirmative matters, such as the untimeliness of the complaint, which appear on the face of the complaint or are established by external submissions which act to defeat the plaintiff's claim, thus enabling the court to dismiss the complaint after considering issues of law or easily proved issues of fact. S.H.A. 735 ILCS 5/2-619.	"Will a motion for involuntary dismissal admit the legal sufficiency of the complaint and raise defects, defenses, or other affirmative matters that appear on the face of the complaint?"	10551.docx	LEGALASE-00096346- LEGALASE-00096347	SA, Sub	0.24	0	0	1	1	1

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360	K.L.M. Constr. Co. v. Town of Pelham, 307 A.2d 658 (N.H. 1973)	307A-561.1	"Generally, in ruling upon a motion to dismiss, the trial court is required to determine whether the allegations contained in the petitioners' complaint are sufficient to state a claim for relief. If the petitioners have sufficiently demonstrated that their claim is true, construing them most favorably to the petitioners." Id. "When the motion to dismiss does not challenge the sufficiency of the petitioners' legal claim but, instead, raises certain defenses, the trial court must look beyond the petitioners' unsubstantiated allegations and determine, based on the facts, whether the petitioners have sufficiently demonstrated their right to claim relief. A jurisdictional challenge based upon lack of standing is such a defense." Id. at 607, 34 A.3d 712. "Since the relevant facts are not in dispute, we review the trial court's determination on standing de novo." Id.	Is a jurisdictional challenge based upon lack of standing a defense that requires a trial court to look beyond the plaintiff's unsubstantiated allegations?	Petrial Procedure - 003127865 - C - PC_007859.docx	R055-003279564-R055-003127865	Condensed SA	0.61	839	15,344	14,873	21,876	9,079
361	New York Hosp. Med. Ctr. v. N.Y. Hosp. Med. Ctr. Contracting Corp., 98 A.D.3d 1096 (N.Y. App. Div. 1, 2013)	24-103	"In order to preserve the national uniformity of this verification system that IRCA would 'prevent any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for employment, or recruit or refer for a fee for employment, unauthorized aliens; IRCA is silent, however, as to a fee for employment, unauthorized aliens; IRCA is silent, however, as to its preemptive effect on any other state or local laws. Immigration Reform and Control Act of 1986, 5 U.S.C. § 501(a)(1), 8 U.S.C.A. § 1324a(n)(2)."	Does the IRCA preempt any State or local law imposing civil or criminal sanctions upon those who employ unauthorized aliens?	Aliens, Immigration and Naturalization Service, 114 F.3d 675 (6th Cir. 1997)	R055-003283710	Condensed SA, Sub 0.19	0	1	0	1	1	1
362	Baer v. New Hampshire Dept of Educ., 160 N.H. 727 (2010)	307A-481	"Generally, in ruling upon a motion to dismiss, the trial court must determine whether the allegations contained in the plaintiff's pleading sufficiently establish a basis upon which relief may be granted." Awarter v. Town of Plainfield, 160 N.H. 503, 507, 8 A.3d 159, 162 (2010) (quotation omitted). "When the motion to dismiss does not challenge the sufficiency of the plaintiff's legal claim but, instead, raises certain defenses, the trial court must look beyond the plaintiff's unsubstantiated allegations and determine, based on the facts, whether the plaintiff has sufficiently demonstrated his right to claim relief." Id. at 507, 8 A.3d at 162 (quotation omitted). A jurisdictional challenge based upon lack of standing is one such defense. See Ossipee Auto Parts v. Ossipee Planning Board, 134 N.H. 401, 403-04, 593 A.2d 241 (1991).	"When the motion to dismiss does not challenge the sufficiency of the plaintiff's legal claim but, instead, raises certain defenses, the trial court must look beyond the plaintiff's unsubstantiated allegations and determine, based on the facts, whether the plaintiff has sufficiently demonstrated his right to claim relief."	Petrial Procedure - Memo # 11079 - C - SNG_83466.docx	R055-003283710-003383148	Condensed SA	0.62	0	1	0	1	1
363	N.S. Knapik & Co. v. Envt. Technics Corp., 493 U.S. 400 (1989)	22-142	"The act of state doctrine is a principle of international law that properly precludes the application of the act of state doctrine to cases and controversies that may embarrass foreign governments, but merely requires that, in the process of deciding, the acts of foreign sovereigns taken within their own jurisdictions shall be deemed valid. That doctrine has no application to the present case because the validity of no foreign sovereign act is at issue."	"Does this act of state doctrine establish an exception for cases and controversies that may embarrass foreign governments, but merely requires that, in the process of deciding, the acts of foreign sovereigns taken within their own jurisdictions shall be deemed valid?"	International Law Memo # 336 - MC.docx	R055-003286138-R055-003296229	SA, Sub 0.42	0	0	1	1	1	1
364	Wilks v. Wilmore, 340 Ill. App. 3d 880 (1999)	307A-560	"In moving for summary judgment, the defendant initially required to make a prima facie showing that the plaintiff failed to exercise reasonable diligence in effectuating service after filing suit. No absolute time frame exists that will shift the burden and require the plaintiff to offer an explanation for their actions. Consequently, the determination of whether the defendant has established a prima facie case based on lack of diligence must be made on a case-by-case basis."	Does no absolute time frame exist for a defendant to show that the plaintiff was not diligent in effecting service that will shift the burden and require the plaintiff to offer an explanation for their actions?	Petrial Procedure - Memo # 6757 - C - SB.docx	R055-0031032838-R055-003302829	Condensed SA, Sub 0.3	0	1	1	1	1	1
365	Harper v. Patterson, 270 Ga. App. 437 (2005)	307A-43	"A motion in limine is a pretrial motion which may be used two ways: 1) only to prevent the mention by anyone, during the trial, of a certain item of evidence or area of inquiry until its admissibility can be determined during the course of the trial outside the presence of the jury. 2) The movant seeks a ruling on the admissibility of evidence prior to the trial. The trial court has an absolute right to refuse to decide the admissibility of evidence prior to trial. If, however, the trial court decides to rule on the admissibility of evidence prior to trial, the court's determination of admissibility is similar to a preliminary ruling on evidence at a pretrial conference and it controls the subsequent course of action, unless modified at trial to prevent manifest injustice."	"If the trial court decides to rule on the admissibility of evidence prior to trial, is the court's determination of admissibility similar to a preliminary ruling on evidence at a pretrial conference and will it control the subsequent course of action, unless modified at the trial to prevent manifest injustice?"	Petrial Procedure - Memo # 24 - C - KAd.docx	R055-00315649-R055-003315650	Condensed SA	0.67	0	1	0	1	1
366	Du Daubin v. Cissco Sys., 2 F. Supp. 3d 717 (2014)	22-142	"The act of state doctrine is a consequence of domestic separation of powers, reflecting the strong sense of the judicial branch that its engagement in the task of passing on the validity of foreign acts of state may hinder the conduct of foreign affairs."	"If the act of state doctrine is a consequence of domestic separation of powers, reflecting the strong sense of the judicial branch that its engagement in the task of passing on the validity of foreign acts of state may hinder the conduct of foreign affairs?"	International Law Memo # 353 - MC.docx	R055-003156418-R055-003315620	SA, Sub 0.79	0	0	1	1	1	1

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
367	City of Chicago v. Morales, 177 Ill. 2d 440	92+45:0918	For purposes of determining whether city's gang loitering ordinance, which criminalized failure to obey police officer's dispersal order to persons loitering in group including person officer believed to be gang member, provided adequate notice of proscribed conduct as required to save ordinance from being void for vagueness, if city intended to require defendant's actual knowledge of another loiterer's gang membership, defendant's actual knowledge of another loiterer's gang membership, if the city intended to require actual knowledge on a defendant's part of another loiterer's gang membership, then that knowledge must be established as a fact in order to support a conviction. See Lunetta, 306 U.S. at 458, 59 S.Ct. at 621, 83 L. Ed. at 893; accord People ex rel. Gallo v. Acuna, 14 Cal 4th 1050, 529 P 2d 596, 60 Cal Rptr. 2d 277 (1997) (imposing requirement of actual knowledge on part of defendant of other party's gang membership status in order for injunction to pass scrutiny under the vagueness doctrine). Although the ordinance provides an affirmative defense that allows a defendant to avoid conviction if he or she can prove that one person in the group of loiterers is a gang member, this affirmative defense does not cure the defect. Showing that one person in a group of loiterers is a gang member does not ultimately prove that a defendant had knowledge of that fact. Furthermore, even adding a knowing association with a gang member to the act of loitering is still insufficient because the city cannot "forbid, on pain of criminal punishment, assembly with others merely to advocate activity, even if that activity is criminal in nature" (People v. Nash, 173 Ill.2d 423, 431-32, 220 Ill.Dec. 154, 672 N.E.2d 1166 (1996)).	The doctrine of subrogation is one of equity and benevolence, and, like contribution and other similar equitable rights, was adopted from the civil law, and its basis is the doing of complete, essential, and perfect justice between all the parties without regard to form, and its object is the prevention of injustice.	What is the purpose of a gang loitering ordinance?	Vagrancy - Memo 018 - SB.docx	ROSS-000317642-ROSS-000317643	Condensed, SA, Sub	0.67	839	15,344	14,873	21,876	9,029
368	Gulfport City ex rel. Holt v. Pickett, 131 N.C. App. 693	366+1	"The doctrine [of subrogation] is one of equity and benevolence, and, like contribution and other similar equitable rights, was adopted from the civil law, and its basis is the doing of complete, essential and perfect justice between all the parties without regard to form, and its object is the prevention of injustice." Hofferth, 108 N.C. 330, 340, 142 E.2d 216, 227 (1928) (quotations and citation omitted); see also Wallace v. Benner, 200 N.C. 124, 130-32, 156 S.E. 795, 798-99 (1931). "It is a fundamental premise of equitable relief that equity regards as done that which in fairness and good conscience ought to be done." Lunkford v. Wright, 347 N.C. 115, 118, 49 S.E.2d 604, 606 (1957) (quotations and citation omitted). "Equity regards substance, not form." Id. And equity "will not allow technicalities of procedure to defeat that which is eminently right and just." Id.	The doctrine of subrogation is one of equity and benevolence, and, like contribution and other similar equitable rights, was adopted from the civil law, and its basis is the doing of complete, essential, and perfect justice between all the parties without regard to form, and its object is the prevention of injustice?"	"Was the doctrine of subrogation adopted from the civil law, and its basis is the doing of complete, essential, and perfect justice between all the parties without regard to form, and its object is the prevention of injustice?"	Subrogation - Memo 389 - VP C.docx	ROSS-000326694-ROSS-000326692	Condensed, SA	0.64	0	1	0	1	1
369	W. States Petroleum Ass'n v. E.P. A., 87 F.3d 280	1,98E+18	The EPA may have the power to adjust its policies and rulings in light of experience and to announce new principles in adjudicatory proceeding. It may not depart, sub silentio, from its usual rules of decision to reach a different, unexplained result in a single case; to the contrary, the EPA must clearly set forth the departure from prior norms so that Court of Appeals may understand and justify the EPA's action and judge consistency of that action with EPA's mandate. Achison, T. & S. E. Ry. v. Wichita Bd. of Trade, 412 U.S. 800, 808, 93 S.Ct. 2375, 37 L.Ed.2d 450 (1973); Arizona Elec. Power Corp., Inc. v. United States, 816 F.2d 1366, 1374 (9th Cir.1987).	While Environmental Protection Agency (EPA) may have power to adjust its policies and rulings in light of experience and to announce new principles in adjudicatory proceeding, it may not depart, sub silentio, from its usual rules of decision to reach different, unexplained result in single case; to the contrary, EPA must clearly set forth ground for its departure from prior norms so that Court of Appeals may understand and justify the EPA's action and judge consistency of that action with EPA's mandate.	"Should an agency, such as the Environmental Protection Agency (EPA), explain the reasons for its departure from its usual set of rule to reach a different result in a case?"	Environmental Law - Memo 53 - AKAdoc	LEGALEASE-00003184-LEGALEASE-00003185	SA, Sub	0.37	0	0	1	1	1
370	Fort Worth Hotel Ltd. P'ship v. Enserch Corp., 973 S.W.2d 746	307A+3	We begin by addressing Lone Star Gas's disregard for the motion in limine. A motion in limine is a procedural device that permits a party to seek exclusion of evidence that is irrelevant, immaterial, or unduly prejudicial to make. See Hartfield Caudill & Belden, Co., v. McCasland, 369 S.W.2d 331, 335 (Tex.1963). The purpose of a motion in limine is to prevent the other party from asking prejudicial questions and introducing prejudicial evidence in front of the jury without first asking the court's permission. Id. The trial court's ruling on a motion in limine is not a ruling that excludes or admits evidence; it is merely a tentative ruling that prohibits a party from asking a certain question or offering certain evidence in front of the jury without first approaching the bench for a ruling. 1996, no writ. When a trial court's order on a motion in limine is violated, we review the violation to see if it is curable by instructions to the jury to disregard it. See Dowex, Director, State Employees Workers' Compensation Div., 857 S.W.2d 577, 580 (Tex.App. "Houston [1st Dist.] 1993, writ denied).	The trial court's ruling on a motion in limine is not a ruling that excludes or admits evidence, but is merely a tentative ruling that prohibits a party from asking a certain question or offering certain evidence in front of the jury without first approaching the bench for a ruling?	Is a trial court's ruling on a motion in limine a tentative ruling that prohibits a party from asking a certain question or offering certain evidence in front of the jury without first approaching the bench for a ruling?	02875.docx	LEGALEASE-0012309-LEGALEASE-0122310	Condensed, SA	0.76	0	1	0	1	1
371	Spectrum Stores v. Clup P'ship v. Enserch Corp., 938	22+342	For as of state is supposed to safeguard immunity purposes, the governmental acts whose validity would be called into question by adjudication of the suit." Calbio, 764 F.2d at 1115, 1116 (emphasis added). The burden lies on the proponent of the doctrine to establish the factual predicate for the doctrine's application. See Alfred Dunhill of London, Inc. v. Republic of Cuba, 425 U.S. 682, 694, 95 S.Ct. 1854, 48	For act of state, as opposed to sovereignty immunity purposes, the governmental acts whose validity would be called into question by adjudication of the suit; the burden lies on the proponent of the doctrine to establish the factual predicate for the doctrine's application.	"For act of state purposes, as the relevant acts, merely those of the government, whose validity would be called into question by adjudication of the suit?"	International Law - Memo 102 - C- U.docx	ROSS-000332426-ROSS-000332427	Condensed, SA	0.33	0	1	0	1	1

ROW	Judicial Opinion	WNKS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences	
372	United States v. Sum of 570,956,005, 234 F. Supp. 3d 212	221+42	Under the act of state doctrine, federal and state courts in the United States must "presume the validity of an "official act of a foreign sovereign performed within its own territory." Republic of Austria v. Altmann, 541 U.S. 677, 124 S.Ct. 2940, 159 L.Ed.2d 211 (2004) (quoting W.S. Kirkpatrick & Co., Inc. v. Enoti, Tectonic Corp. 493 U.S. 400, 405, 110 S.Ct. 701, 107 L.Ed.2d 816 (1990)). The doctrine applies when "the relief sought or the defense interposed would [require] a court in the United States to declare [invalid] the official act of a foreign sovereign performed within its own territory." Kirkpatrick, 493 U.S. at 405, 110 S.Ct. 701. Neither a statute nor the "text of the Constitution [requires] the act of state doctrine." 124 S.Ct. at 2940. The doctrine is "not a rule of decision, 84 S.Ct. 923, 11 L.Ed.2d 804 (1964). Rather, "the continuing vitality depends on its capacity to reflect the proper distribution of the functions between the judicial and political branches of the Government on matters bearing upon foreign affairs." Id. at 427-28, 84 S.Ct. 923. "As such, it operates as a rule of judicial restraint in decisionmaking, not [as] a jurisdictional limitation like the political question doctrine." Hounsi v. Mitchell, 796 F.3d 1, 12 (D.C. Cir. 2015), or as "some vague doctrine of abstention." Kirkpatrick, 493 U.S. at 406, 110 S.Ct. 701.	The act of state doctrine, under which federal and state courts in the United States must presume the validity of an official act of a foreign sovereign performed within its own territory, applies when the relief sought or the defense interposed would require an American court to declare invalid the official act of a foreign sovereign performed within its own territory.	Is an act of state doctrine applicable when the relief sought or the defense interposed would require an American court to declare invalid the official act of a foreign sovereign performed within its boundaries?	015681.docx	LEGALASE-00123267-LEGALASE-00123268	0	0.72	839	1	15,344	14,873	21,876	9,029
									Condensed, SA				0	1	
373	Geophysical Serv. v. TOPO-NOPEC Geophysical Co., 850 F.3d 785	221+42	The act of state doctrine "limits, for prudential rather than jurisdictional reasons, the adjudication in American courts of the validity of a foreign sovereign's public acts." The doctrine applies to bar an action when "the relief sought or the defense interposed would have required a court in the United States to declare [invalid] the official act of a foreign sovereign performed within its own territory." Though seemingly international in character, the doctrine is founded in concerns of domestic separation of powers, "reflecting the strong sense of the Judicial Branch that its engagement in the task of passing on the validity of foreign acts of state may hinder the conduct of foreign affairs." "Act of state issues only arise when a court must decide that is, when the outcome of the case turns upon "the effect of official action by a foreign sovereign." It can apply to acts of the defendant as a private party, not an instrumentality of a foreign state, and even if the suit is not based specifically on a sovereign act."	"Act of state doctrine" limits, for prudential (rather than jurisdictional) reasons, the adjudication in American courts of the validity of a foreign sovereign's public acts, and thus the doctrine applies to bar an action when the relief sought or the defense interposed would have required a court in the United States to declare [invalid] the official act of a foreign sovereign performed within its own territory, but the doctrine can apply even if the defendant is a private party, not an instrumentality of a foreign state, and even if the suit is not based specifically on a sovereign act.	Does the act of state doctrine bar judicial review of claim if there is an official act of a foreign sovereign performed within its own territory, and relief is sought to a defense interposed that require a court in United States to declare invalid the foreign sovereign's official act?	015781.docx	LEGALASE-00123266-LEGALASE-00123267	Condensed, SA	0.42	0	1	0	1		
									Condensed, SA				0	1	
374	Geophysical Serv. v. TOPO-NOPEC Geophysical Co., 850 F.3d 785	221+42	The act of state doctrine "limits, for prudential rather than jurisdictional reasons, the adjudication in American courts of the validity of a foreign sovereign's public acts." The doctrine applies to bar an action when "the relief sought or the defense interposed would have required a court in the United States to declare [invalid] the official act of a foreign sovereign performed within its own territory." Though seemingly international in character, the doctrine is founded in concerns of domestic separation of powers, "reflecting the strong sense of the Judicial Branch that its engagement in the task of passing on the validity of foreign acts of state may hinder the conduct of foreign affairs." "Act of state issues only arise when a court must decide that is, when the outcome of the case turns upon "the effect of official action by a foreign sovereign." It can apply to acts of the defendant as a private party, not an instrumentality of a foreign state, and even if the suit is not based specifically on a sovereign act."	"Act of state doctrine" limits, for prudential (rather than jurisdictional) reasons, the adjudication in American courts of the validity of a foreign sovereign's public acts, and thus the doctrine applies to bar an action when the relief sought or the defense interposed would have required a court in the United States to declare [invalid] the official act of a foreign sovereign performed within its own territory, but the doctrine can apply even if the defendant is a private party, not an instrumentality of a foreign state, and even if the suit is not based specifically on a sovereign act.	In determining whether to refrain from adjudicating a case under the act of state doctrine, where official acts of foreign sovereignty would be declared invalid, what factors are considered?	015783.docx	LEGALASE-00123253-LEGALASE-00123255	Condensed, SA	0.42	0	1	0	1		
									Condensed, SA, Sub				1	1	
375	Sarei v. Rio Tinto PLC, F. Supp. 2d 1116	221+42	The doctrine is not one of abstention; rather, it is a "principle of decision binding on federal and state courts alike." "Environmental Tectonics, supra, 493 U.S. at 406, 110 S.Ct. 701 (quoting Sabatino, supra, 376 U.S. 399, 404, 24 L.Ed.2d 429, 80 S.Ct. 1352, 1353 (1964)). The doctrine applies within its own boundaries of one sovereign State, becomes "a rule of decision for the courts of this country." "Id. (quoting Ricard v. American Metal Co., 246 U.S. 304, 308, 38 S.Ct. 312, 62 L.Ed. 733 (1918)). The act of state doctrine comes into play only when the outcome of a case turns on the effect of official action by a foreign sovereign. See id.	Act of state doctrine is not one of abstention, rather, it is a principle of decision binding on federal and state courts alike that comes into play only when the outcome of a case turns on the effect of official action by a foreign sovereign.	Is the act of state doctrine a principle of decision binding on federal and state courts alike that comes into play only when the outcome of a case turns on the effect of official action by a foreign sovereign?	020223.docx	LEGALASE-00123268-LEGALASE-00123269	Condensed, SA, Sub	0.62	0	1	1	1		
									Condensed, SA				0	1	
376	Riverside Methodist Hosp. Ass'n of Ohio v. Guthrie, 3 Ohio App. 3d 808	307Va.3	While a motion in limine is a most useful procedural device, it is frequently misused and misunderstood. A motion in limine may be used in two different ways: (1) as the equivalent of a motion to suppress evidence, which is either competent or improper because of some unusual circumstance; and (2) as a means of raising objection to an area of inquiry to prevent prejudicial questions and statements until the admissibility of the questionable evidence can be determined during the course of the trial. Part of the confusion concerning motions in limine arises from the two different purposes it can serve.	Motion in limine may be used as equivalent of motion to suppress evidence, which is either not competent or improper because of some unusual circumstances, and as means of raising objection to area of inquiry to prevent prejudicial questions and statements until admissibility of questionable evidence can be determined during course of trial.	Is a motion in limine a means of raising objection to an area of inquiry to prevent prejudicial questions and statements until the admissibility of the questionable evidence can be determined during the course of the trial?	041185.docx	LEGALASE-00124152-LEGALASE-00124158	Condensed, SA	0.44	0	1	0	1		
									Condensed, SA				0	1	

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	Callego v. Bancomar, S.A., 764 F.2d 101	22:1-442	Like the doctrine of sovereign immunity, the act of state doctrine springs "from the thoroughly sound principle that on occasion individual litigants may have to forgo decision on the merits of their claims because the involvement of the courts in such a decision might frustrate the conduct of the Nation's foreign policy." First National City Bank v. Banco Nacional de Cuba, 406 U.S. 759, 92 S.Ct. 1808, 1814, 32 L.Ed.2d 466 (1972); see also Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 438, 84 S.Ct. 923, 945, 11 L.Ed.2d 804 (1964) (act of state doctrine "shares with the immunity doctrine a respect for sovereign states"). ¹² Thus, in considering the act of state issue, we traverse much of the same path that we did in considering the immunity doctrine. However, unlike the immunity doctrine, which is grounded in international law, the act of state doctrine is grounded in domestic law with domestic precedents. The act is a tangled web of statutory ambiguities, the act of state doctrine is an ally castle. Rather than narrowly focusing on the status of the act and actor complained of, we examine more generally the underlying acts of the foreign state. In the act of state context, even if the defendant is a private party, not an instrumentality of a foreign state, and even if the suit is not based specifically on a sovereign act, we nevertheless decline to decide the merits of the case if in doing so we would need to judge the validity of the public acts of a sovereign state performed within its own territory. Sabbatino, 376 U.S. at 428, 84 S.Ct. at 940; Compania de Gas de Nuevo Laredo v. Entex, Inc., 686 F.2d 322, 325-26 (5th Cir. 1982) (applying act of state doctrine in suit between private parties), cert. denied, 460 U.S. 1041, 103 S.Ct. 1435, 75 L.Ed.2d 794 (1983); Tabaskera Severiano Jorge S.A. v. Standard Oil Co., 392 F.2d 706 (5th Cir.) (same), cert. denied, 393 U.S. 924, 89 S.Ct. 255, 21 L.Ed.2d 260 (1968).	Under the act of state doctrine, even if defendant is private party, not instrumentality of foreign state, and even if suit is not based specifically on sovereign act, United States will decline to decide merits of case if in doing so it would need to judge validity of public acts of sovereign state performed within its own territory.	Does the act of state doctrine preclude US courts from inquiring into the validity of public acts a recognized foreign power commits within its own territory, and the doctrine applies when the challenged conduct is the public act of those with authority to exercise sovereign powers of the foreign state?	International Law - Memo #439 - C - MS.docx	ROSS-00283372-ROSS-00328373	Condensed, SA	0.83	839	0	1	15,344	14,873	21,876	9,029
377	Galup, Swissair v. Swiss Air Transp. Co., 873 F.2d 650	22:1-442	The act of state doctrine precludes the courts of this country "from inquiring into the validity of the public acts a recognized foreign power committed within its own territory." Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 401, 84 S.Ct. 923, 926, 11 L.Ed.2d 804 (1964). The doctrine applies when the challenged conduct "was the public act of those with authority to exercise the sovereign powers" of the foreign state. Allied Dunhill of London, Inc. v. Cuba, 425 U.S. 682, 694, 36 S.Ct. 1854, 1861, 48 L.Ed.2d 304 (1976). Because the act of state doctrine has rarely had to consider the threshold issue of whether the challenged action was the act of a foreign state, since the action has usually been taken by an official of sufficient rank to eliminate any doubt that the official was exercising the sovereign power of his government. See, e.g., Banco Nacional de Cuba v. Sabbatino, supra (expropriation ordered by President of Cuba); Oetjen v. Central Leather Co., 246 U.S. 297, 38 S.Ct. 309, 62 L.Ed. 726 (1918) (seizure of property by military commander, acting for forces of head of Mexican government); Underhill v. Hernandez, 168 U.S. 250, 18 S.Ct. 83, 42 L.Ed. 456 (1897) (detention ordered by military commander of revolutionary government of Venezuela).	Does the act of state doctrine preclude US courts from inquiring into the validity of public acts a recognized foreign power commits within its own territory, and the doctrine applies when the challenged conduct is the public act of those with authority to exercise sovereign powers of the foreign state?	International Law - Memo #437 - C - MS.docx	ROSS-00283866-ROSS-00283868	Condensed, SA	0.76	0	1	0	1	1	1		
379	Ramirez de Arillano v. Weinberger, 745 F. 2d 1500	22:1-483	We cannot consider the act of state doctrine in a factual or procedural vacuum. It must here, as always, be applied to the facts in the procedural posture of the case. When the defense is raised in connection with a motion to dismiss under Rule 12(b)(6), the court must be satisfied that there is no set of facts favorable to the plaintiffs and suggested by the complaint which could fail to establish the occurrence of an act of state. To the extent critical facts pertaining to the defense are disputed, or not fully developed in a complete record, reviewing court must be certain that it does not lead to conclusions that are reviewable only on the basis of the pleadings. To the extent critical facts pertaining to the defense are undisputed, and the ordinary process of discovery and fact-finding in district court, Fed Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.	When act of state doctrine is raised as defense in connection with motion to dismiss, court must be satisfied that there is no set of facts favorable to plaintiffs and suggested by complaint which would fail to establish occurrence of act of state; to extent crucial facts pertaining to defense are disputed, or not fully developed in a complete record, reviewing court must be certain that it does not lead to conclusions that are reviewable only on the basis of the pleadings. To the extent critical facts pertaining to the defense are undisputed, and the ordinary process of discovery and fact-finding in district court, Fed Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.	"When act of state doctrine is raised as defense in connection with motion to dismiss, must a court be satisfied that there is no set of facts favorable to plaintiffs and suggested by complaint which would fail to establish occurrence of act of state?"	020511.docx	LEGALASE-00124469-LEGALASE-00124470	SA, Sub	0.27	0	0	1	1	1		
380	Bardley v. Harlow & Jones, 570 F. Supp. 955	22:1-554	Chief Justice Fuller offered the classic formulation of the Act of State Doctrine in Underhill v. Hernandez, 168 U.S. 250, 18 S.Ct. 83, 42 L.Ed. 456 (1897), at 252, 18 S.Ct., at 84: "Every sovereign State is bound to respect the independence of every other Sovereign State, and the courts of one country will not sit in judgment of the acts of the government of another done within its own territory. Redress of grievances by reason of such acts must be obtained through the means open to be availed of by sovereign powers as between themselves. So stated, the doctrine recognizes first, that to the extent that the United States has an interest in the internal affairs of a foreign sovereign, that interest is best represented by the executive branch, and second, that, in any event, the United States courts are without power to enforce their decrees as they apply to property held extra-territorially without the consent of the foreign sovereign. For these reasons, where the property in issue is within the jurisdiction of the foreign sovereign, the Act of State Doctrine, which counsels a "hands off" approach, is "applicable even if international law has been violated." Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 431, 84 S.Ct. 923, 942, 11 L.Ed.2d 804 (1964).	Does the act of state doctrine recognize that interest is best represented by the executive branch and United States courts are without power to enforce their decrees?	Does the act of state doctrine recognize that interest is best represented by the executive branch and United States courts are without power to enforce their decrees?	020975.docx	LEGALASE-00124587-LEGALASE-00124588	Condensed, SA	0.72	0	1	0	1	1		
381	Hickslav v. Chatham, 272 Ga. App. 746	15:7-155[1]	A party whose motion in limine was erroneously denied may decide to introduce the information in an attempt to explain it to the jury without being found to have later "opened the door" to introduction of evidence on that topic. Turner v. W.E. Purnell Co., 202 Ga.App. 287, 289-92, 414 S.E.2d 246 (1991). As stated in Turner (Alphaland's counsel was merely seeking to introduce evidence on the merits of the case after the court had ruled against the motion to introduce the evidence, and second, the appellant's counsel to attempt to explain to the jury in his opening statement the timing of the filing of the complaint. Id.	Can a party whose motion in limine was erroneously denied decide to introduce the information in an attempt to explain it to the jury without being found to have later opened the door to introduction of evidence on that topic?	Can a party whose motion in limine was erroneously denied decide to introduce the information in an attempt to explain it to the jury without being found to have later opened the door to introduction of evidence on that topic?	031156.docx	LEGALASE-00125162-LEGALASE-00125163	Condensed, SA	0.64	0	1	0	1	1		

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306	Pitman v. N. Carolina Dept of Transp., 97 N.C. App. 658	48A+279	Department of Transportation (DOT) was liable under State Tort Claims Act for injuries and property damage sustained when motorist collided with DOT truck that was parked partially blocking road adjacent to sign being replaced; flashing light on DOT truck was not proper warning as it was not illuminated by red or yellow lights; DOT's failure to post adequate traffic control signs at work zone constituted negligent tortious conduct while traveling at lawful rate of speed and had no reasonable opportunity to avoid truck. G.S. § 143-294.	Department of Transportation (DOT) was liable under State Tort Claims Act for injuries and property damage sustained when motorist collided with DOT truck that was parked partially blocking road adjacent to sign being replaced; flashing light on DOT truck was not proper warning as it was not illuminated by red or yellow lights; DOT's failure to post adequate traffic control signs at work zone constituted negligent tortious conduct while traveling at lawful rate of speed and had no reasonable opportunity to avoid truck. G.S. § 143-294.	Can the Department of Transportation (DOT) be held liable in tort?	Highways - Memo 35-RK.docx	ROSS-0033143226	Condensed SA Sub 0.05	839	15_344	1	1	21,876	9,029
307	State v. Jason H., 215 W. Va. 439	307A+717.1	More specifically, as stated by McCallister, 178 W. Va. 77, 357 S.E.2d 759 (1987), this Court addressed the requirements for a continuance where a witness is unavailable. As will be pointed out by McCallister below, a party moving for a continuance due to the unavailability of a witness must show: (1) the materiality and importance of the evidence to the attendance of the witness; (2) that a good possibility exists that the witness will be available at some later date; and (3) that the party's motion would be made in a timely fashion so as to prevent disruption in the orderly process of justice.	A party moving for a continuance due to the unavailability of a witness must show: (1) the materiality and importance of the evidence to the attendance of the witness; (2) that a good possibility exists that the witness will be available at some later date; and (3) that the party's motion would be made in a timely fashion so as to prevent disruption in the orderly process of justice.	What must a party who moves for a continuance due to the unavailability of a witness show?	Pretrial Procedure - Memo # 1791 - C-SI.docx	ROSS-00338771-ROSS-003387772	Condensed SA	0.32	0	1	0	1	
308	Hendry v. Haynes, 376 So.2d 1030	28B+545	The facts, however, as presented in the instant case are that if a third party has been injured by the negligence of one partner in each of two partnerships, the partnership which is liable in tort is each of the members of the firm of the obligation of the utmost good faith in their dealings with one another with respect to partnership affairs, of acting for the common benefit of all the partners in all transactions relating to the firm business, and of refraining from taking any advantage of one another by the slightest misrepresentation, concealment, threat, or adverse pressure of any kind." 58 C.J.S. Partnerships § 76.	Relation of partnership is fiduciary in character and imposes on members thereof obligations of utmost good faith towards one another, and upon each other with respect to partnership affairs, of acting for the benefit of all partners in all transactions relating to firm business, and of refraining from taking any advantage of one another by the slightest misrepresentation, concealment, threat or adverse pressure of any kind. G.S. § 8-89.	"Does a partner have the duty to ensure that he obtains no advantage in partnership affairs by misrepresentation, concealment, threat or adverse pressure?"	0228B.docx	LEGALCASE-00332503-LEGALCASE-00332504	Condensed SA	0.32	0	1	0	1	
309	Diosce of N. C. of Protestant Episcopal Church v. Sale, 254 N.C. 218	307A+331	Upon the plaintiff's request, Judge Clarkson ordered the defendant to permit inspection and copying of the books, papers and documents relied on by the defendant as showing title to the stock. The order was made pursuant to G.S. § 8-89 which gives superior court judges, in their discretion, the power to order parties to produce for inspection and copying books, records and documents relating to the management of corporations, partnerships, trusts, estates, etc., and should be liberally construed. Abbott v. Gregory, 196 N.C. 9, 144 S.E. 297.	Statute giving superior court judges, in their discretion, power to order parties to produce for inspection and copying documents relating to management of various entities should be liberally construed. G.S. § 8-89.	"Is the statute giving superior court judges, in their discretion, power to order parties to produce for inspection and copying documents relating to management of various entities should be liberally construed?"	Pretial Procedure - Memo # 2101 - C-SK.docx	ROSS-003386475-ROSS-003286476	Condensed SA Sub 0.6	0	1	1	1	1	
310	Kepa v. Hawaii Wedding Co., 56 Haw. 544	41B+1	We agree with the reasoning of the Appeals Board in holding the appellant liable herein. The paramount consideration in determining whether the alleged special employer is in fact a special employer of the worker in workmen's compensation tent employee cases is whether the worker is engaged in the business of the employer. If the worker is not an employee and such control strongly supports the inference that a special employment exists. McFarland v. Voorhes-Tindle Co., 52 Cal.2d 688, 705, 343 P.2d 932, 937 (1959). This view focuses on the general relationship between the claimant and the employees during the course of employment rather than upon the relative ability of the leading employer as compared to that of the borrowing employer to prevent the accident which caused the injury. Workmen's compensation laws were enacted to protect the employee against financial loss resulting from inability to fault. (Citation omitted.) They represent a socially enforced bargain in the employee giving up his right to recover common law damages (in tort) from the employer in exchange for the certainty of a statutory award for all work-connected injuries. Since liability is made dependent on a nexus to the job, the essential of an employer-employee relationship, workmen's compensation acts is the existence of an employment relationship. See, e.g., In re Estate of Kawaia, 52 Haw. 555, 558, 485 P.2d 187, 190 (1971). See also HRSS § 386-5.	Workmen's compensation laws represent a socially enforced bargain: employee giving up his right to recover common-law damages, in tort, from employer in exchange for certainty of statutory award for all work-connected injuries. HRSS §§ 386-1, 386-5, 386-8.	"Do workmen's compensation laws represent a socially enforced bargain: employee giving up his right to recover common-law damages, in tort, from employer in exchange for certainty of statutory award for all work-connected injuries?"	047801.docx	LEGALCASE-00131703-LEGALCASE-00131702	Condensed SA	0.83	0	1	0	1	
311	Great Socialist People's Libyan Arab Jamahiriya v. Libya, 608 F. Supp. 201	221+452	Section 1607 of Title 28 of the United States Code provides, in pertinent part, that where a foreign state brings an action in a court of the United States, that court shall not dismiss the claim solely on the basis of the transactional immunity of the foreign state. . . . To the extent that the counterclaim does not seek relief exceeding in amount or differing in kind from that sought by the foreign state[...]" id., *1697(6). See also Wacker v. Bisson, 348 F.2d 602, 610 (5th Cir.1965) ("[A] voluntary appearance by a foreign government waives immunity as to any essentially defensive measures taken by the private citizen."). Essentially, where "[t]he sovereign has freely chosen to appear before the domestic courts, it cannot thereafter object to allow a settlor or counterclaim based on the same subject matter" as the allegations upon which the sovereign is seeking relief. Nat'l City Bank of New York v. Republic of China, 348 U.S. 356, 344 F.2d 423, 99 L.Ed. 389 (1955).	Where a foreign sovereign has freely come as a suitor into United States courts, the principle of fair dealing allows a settlor or counterclaim based on the same subject matter as the allegations upon which the sovereign is seeking relief. 28 U.S.C. § 1607.	"Where a foreign sovereign has freely come as a suitor into United States courts, do principles of fair dealing allow a settlor or counterclaim based on the same subject matter as the allegations upon which the sovereign is seeking relief?"	International Law - Memo #035 ANC.docx	ROSS-003390606-ROSS-00290507	Condensed SA	0.75	0	1	0	1	

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Between Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
392	W. Grs. Nurses v. Ergas, 187 F.3d 1354	307A+517.1	When a plaintiff takes a voluntary dismissal, "the effect is to remove completely the court's consideration of the plaintiff's motion." <i>W. Grs. Nurses v. Ergas</i> , 187 F.3d 1354, at 69. See also <i>Miller v. Fortune Ins. Co.</i> , 484 So.2d 1221, 1223 (Fla.3d 86). However, a court may retain jurisdiction to decide matters collateral to a case, such as attorney's fees. See <i>MacBain v. Bowling</i> , 374 So.2d 75, 76 (Fla.Dist.Ct.App.1979); <i>Tampa Letter Carriers, Inc. v. Mack</i> , 649 So.2d 850, 851 (Fla.Dist.Ct.App.1995). A voluntary dismissal, therefore, immediately divests the trial court of jurisdiction to decide the case at hand, even though the court's determination of a collateral matter, such as attorney's fees, is collateral to the merits of the case. The effect of placing restrictions on the voluntary dismissal, an action for which the circuit court would have no jurisdiction.	When a plaintiff takes a voluntary dismissal under Florida law, the effect is to remove completely from the court's consideration the power to decide the merits of the case. However, a court may retain jurisdiction to decide matters collateral to a case, such as attorney fees.	"When a plaintiff takes a voluntary dismissal, is the effect is to remove completely from the court's consideration the power to decide the merits of the case, or is it equivalent in all respects to a deprivation of jurisdiction?"	Final Procedure - Memo # 2680 - C-395.docx	ROSS-002290313-ROSS-003303620	Condensed, SA, Sub 0.68	0	839	15,344	14,873	21,876	9,079
			In exercising this discretion [i.e., allowing amendment to answers deemed admitted] the court must balance the importance of having the answers admitted, the importance of the plaintiff's right to rely on admissions in the preparation of trial." <i>Overland Trust Co. v. Firestone Bank</i> , Sept. 27, 1961, Summit App. Nos. 11,595 and 11,599, unreported, 1964 WL 3563, at 1. The length of time between when the answers should have been filed and when they are actually submitted is only one factor to be considered. See <i>Hatfield v. Orville Sav. Bank</i> (Dec. 28, 1988), Summit App. No. 13645, unreported, 1988 WL 133906, at 1. Where a trial judge concludes that allowing a party to amend answers is in the best interests of justice, the court's decision is not a determination of the merits of the case and is not subject to a determination of attorney's fees in a collateral order of the circuit court. It does not have the effect of placing restrictions on the voluntary dismissal, an action for which the circuit court would have no jurisdiction.	In exercising this discretion whether to allow a party to amend answers deemed admitted, court must balance the importance of having the answers admitted, must a court balance the importance of the plaintiff's right to rely on admissions in the preparation of trial. Rules Civ. Proc., Rule 36(f).	"In exercising this discretion whether to allow a party to amend answers deemed admitted, must a court balance the importance of having the answers admitted, or is the desirability of allowing the parties to rely on admissions in the preparation of trial?"	Final Procedure - Memo # 3051 - C-719.docx	ROSS-003030858-ROSS-003303860	Condensed, SA, Sub 0.78	0	1	1	1	1	1
393	Tucker v. McQuery, 107 Ohio Misc.2d 31	307A+486	As pointed out in <i>Matter of Maria Liebl</i> , the property rights themselves, as distinguished from the evidence of ownership, have always had their situs in this country, not in Czechoslovakia. Assuming, nevertheless, that the transfer of those rights occurred in the latter country, it does not follow that the evidence of ownership now being "here" the law of the United States governs the rights of the parties. The law of the state sent there and was physically present here when the rights of a domestic distributee arose. When <i>Theresa Liebl</i> sent the property here she implicitly submitted it to the law of this state, for it is here protected by our law, just as the bank book, as a bank book, in the <i>Estate of Maria Liebl</i> was subject to the laws of Czechoslovakia while physically present there. <i>Oliver v. Townes</i> , 2 Mart., N.S., 93 (Louisiana). The general rule that the transfer of a chose in action is governed by the law where the transfer is made, is not subject to exception in the case of choses in action transferred to another state, such transfer is not valid in that other state if the transfer which has possession of the property gives effect to the municipal laws of the state of transfer it does so upon a principle of comity. It has been said: "The municipal laws of a country have no force beyond its territorial limits, [99] and when another government permits these to be carried into effect beyond its jurisdiction, it does so upon a principle of comity. In doing so care must be taken that no injury is inflicted on her own citizens, otherwise justice would be sacrificed to courtesy, nor can the foreigner or stranger complain of this. If he sends his property within a jurisdiction different from where he resides, he implicitly submits it to the rules and regulations in force in the country where he places it. What the law protects it has the right to regulate." <i>Emphasis in original.</i> <i>Oliver v. The Denial of Husband's motion was not error. The grant or denial of a motion is a discretionary act of the court, and will be reversed only for abuse of discretion. Such abuse of discretion will be found when the moving party has shown good cause for granting the motion. In re L.C., 659 N.E.2d 593, 597 [Ind.Ct.App.1995]. A trial court is not compelled to find good cause based upon a bare allegation that the moving party is out of state, see <i>Multivest Properties v. Hughes</i>, 671 N.E.2d 199, 201 [Ind.Ct.App.1996], nor is it compelled to find good cause based upon an asserted inability to procure local counsel unless the moving party has acted in bad faith. See <i>W. Grs. Nurses v. Ergas</i>, 187 F.3d 1354, at 69. See also <i>Miller v. Fortune Ins. Co.</i>, 484 So.2d 1221, 1223 (Fla.3d 86). Given the difference necessarily due a trial court's decision on this matter, and the absence of evidence that husband sought local counsel or that he did so with diligence, we cannot say the trial court abused its discretion when it denied husband's motion for a continuance.</i>	A trial court is not compelled to find good cause for a continuance based upon an asserted inability to procure local counsel unless the moving party has acted in bad faith. A trial court is not compelled to find good cause based upon an asserted inability to procure local counsel unless the moving party has acted with diligence in seeking counsel.	Is a trial court compelled to find good cause based upon an asserted inability to procure local counsel when the moving party has acted with diligence in seeking counsel?	025656.docx	LEGALISE-00135597-LEGALISE-00135598	Condensed, SA	0.72	0	1	0	1	
394	Moehn v. Hoehn, 716 N.E.2d 479	307A+716	As pointed out in <i>Matter of Maria Liebl</i> , the property rights themselves, as distinguished from the evidence of ownership, have always had their situs in this country, not in Czechoslovakia. Assuming, nevertheless, that the transfer of those rights occurred in the latter country, it does not follow that the evidence of ownership now being "here" the law of the United States governs the rights of the parties. The law of the state sent there and was physically present here when the rights of a domestic distributee arose. When <i>Theresa Liebl</i> sent the property here she implicitly submitted it to the law of this state, for it is here protected by our law, just as the bank book, as a bank book, in the <i>Estate of Maria Liebl</i> was subject to the laws of Czechoslovakia while physically present there. <i>Oliver v. Townes</i> , 2 Mart., N.S., 93 (Louisiana). The general rule that the transfer of a chose in action is governed by the law where the transfer is made, is not subject to exception in the case of choses in action transferred to another state, such transfer is not valid in that other state if the transfer which has possession of the property gives effect to the municipal laws of the state of transfer it does so upon a principle of comity. It has been said: "The municipal laws of a country have no force beyond its territorial limits, [99] and when another government permits these to be carried into effect beyond its jurisdiction, it does so upon a principle of comity. In doing so care must be taken that no injury is inflicted on her own citizens, otherwise justice would be sacrificed to courtesy, nor can the foreigner or stranger complain of this. If he sends his property within a jurisdiction different from where he resides, he implicitly submits it to the rules and regulations in force in the country where he places it. What the law protects it has the right to regulate." <i>Emphasis in original.</i> <i>Oliver v. The Denial of Husband's motion was not error. The grant or denial of a motion is a discretionary act of the court, and will be reversed only for abuse of discretion. Such abuse of discretion will be found when the moving party has shown good cause for granting the motion. In re L.C., 659 N.E.2d 593, 597 [Ind.Ct.App.1995]. A trial court is not compelled to find good cause based upon a bare allegation that the moving party is out of state, see <i>Multivest Properties v. Hughes</i>, 671 N.E.2d 199, 201 [Ind.Ct.App.1996], nor is it compelled to find good cause based upon an asserted inability to procure local counsel unless the moving party has acted in bad faith. See <i>W. Grs. Nurses v. Ergas</i>, 187 F.3d 1354, at 69. See also <i>Miller v. Fortune Ins. Co.</i>, 484 So.2d 1221, 1223 (Fla.3d 86). Given the difference necessarily due a trial court's decision on this matter, and the absence of evidence that husband sought local counsel or that he did so with diligence, we cannot say the trial court abused its discretion when it denied husband's motion for a continuance.</i>	A country's laws have no force beyond its territorial limits, and government of another country will permit them to be carried into effect within such country's jurisdiction only on principle of comity, but in doing so must take care to inflict no injury on citizens thereof.	"Do the municipal laws of a country have force beyond its territorial limits, and when another government permits that force to be carried into effect within her jurisdiction, does she do so upon a principle of comity, requiring that care be taken so that no injury is inflicted on her own citizens?"	020724.docx	LEGALISE-00135728-LEGALISE-00135730	Condensed, SA, Sub 0.86	0	1	1	1	1	1
			As pointed out in <i>Matter of Maria Liebl</i> , the property rights themselves, as distinguished from the evidence of ownership, have always had their situs in this country, not in Czechoslovakia. Assuming, nevertheless, that the transfer of those rights occurred in the latter country, it does not follow that the evidence of ownership now being "here" the law of the United States governs the rights of the parties. The law of the state sent there and was physically present here when the rights of a domestic distributee arose. When <i>Theresa Liebl</i> sent the property here she implicitly submitted it to the law of this state, for it is here protected by our law, just as the bank book, as a bank book, in the <i>Estate of Maria Liebl</i> was subject to the laws of Czechoslovakia while physically present there. <i>Oliver v. Townes</i> , 2 Mart., N.S., 93 (Louisiana). The general rule that the transfer of a chose in action is governed by the law where the transfer is made, is not subject to exception in the case of choses in action transferred to another state, such transfer is not valid in that other state if the transfer which has possession of the property gives effect to the municipal laws of the state of transfer it does so upon a principle of comity. It has been said: "The municipal laws of a country have no force beyond its territorial limits, [99] and when another government permits these to be carried into effect beyond its jurisdiction, it does so upon a principle of comity. In doing so care must be taken that no injury is inflicted on her own citizens, otherwise justice would be sacrificed to courtesy, nor can the foreigner or stranger complain of this. If he sends his property within a jurisdiction different from where he resides, he implicitly submits it to the rules and regulations in force in the country where he places it. What the law protects it has the right to regulate." <i>Emphasis in original.</i> <i>Oliver v. The Denial of Husband's motion was not error. The grant or denial of a motion is a discretionary act of the court, and will be reversed only for abuse of discretion. Such abuse of discretion will be found when the moving party has shown good cause for granting the motion. In re L.C., 659 N.E.2d 593, 597 [Ind.Ct.App.1995]. A trial court is not compelled to find good cause based upon a bare allegation that the moving party is out of state, see <i>Multivest Properties v. Hughes</i>, 671 N.E.2d 199, 201 [Ind.Ct.App.1996], nor is it compelled to find good cause based upon an asserted inability to procure local counsel unless the moving party has acted in bad faith. See <i>W. Grs. Nurses v. Ergas</i>, 187 F.3d 1354, at 69. See also <i>Miller v. Fortune Ins. Co.</i>, 484 So.2d 1221, 1223 (Fla.3d 86). Given the difference necessarily due a trial court's decision on this matter, and the absence of evidence that husband sought local counsel or that he did so with diligence, we cannot say the trial court abused its discretion when it denied husband's motion for a continuance.</i>	A trial court is not compelled to find good cause for a continuance based upon an asserted inability to procure local counsel unless the moving party has acted with diligence in seeking counsel.	Is a trial court compelled to find good cause based upon an asserted inability to procure local counsel when the moving party has acted with diligence in seeking counsel?	025656.docx	LEGALISE-00135597-LEGALISE-00135598	Condensed, SA	0.72	0	1	0	1	
395	Moehn v. Hoehn, 716 N.E.2d 479	307A+716	As pointed out in <i>Matter of Maria Liebl</i> , the property rights themselves, as distinguished from the evidence of ownership, have always had their situs in this country, not in Czechoslovakia. Assuming, nevertheless, that the transfer of those rights occurred in the latter country, it does not follow that the evidence of ownership now being "here" the law of the United States governs the rights of the parties. The law of the state sent there and was physically present here when the rights of a domestic distributee arose. When <i>Theresa Liebl</i> sent the property here she implicitly submitted it to the law of this state, for it is here protected by our law, just as the bank book, as a bank book, in the <i>Estate of Maria Liebl</i> was subject to the laws of Czechoslovakia while physically present there. <i>Oliver v. Townes</i> , 2 Mart., N.S., 93 (Louisiana). The general rule that the transfer of a chose in action is governed by the law where the transfer is made, is not subject to exception in the case of choses in action transferred to another state, such transfer is not valid in that other state if the transfer which has possession of the property gives effect to the municipal laws of the state of transfer it does so upon a principle of comity. It has been said: "The municipal laws of a country have no force beyond its territorial limits, [99] and when another government permits these to be carried into effect beyond its jurisdiction, it does so upon a principle of comity. In doing so care must be taken that no injury is inflicted on her own citizens, otherwise justice would be sacrificed to courtesy, nor can the foreigner or stranger complain of this. If he sends his property within a jurisdiction different from where he resides, he implicitly submits it to the rules and regulations in force in the country where he places it. What the law protects it has the right to regulate." <i>Emphasis in original.</i> <i>Oliver v. The Denial of Husband's motion was not error. The grant or denial of a motion is a discretionary act of the court, and will be reversed only for abuse of discretion. Such abuse of discretion will be found when the moving party has shown good cause for granting the motion. In re L.C., 659 N.E.2d 593, 597 [Ind.Ct.App.1995]. A trial court is not compelled to find good cause based upon a bare allegation that the moving party is out of state, see <i>Multivest Properties v. Hughes</i>, 671 N.E.2d 199, 201 [Ind.Ct.App.1996], nor is it compelled to find good cause based upon an asserted inability to procure local counsel unless the moving party has acted in bad faith. See <i>W. Grs. Nurses v. Ergas</i>, 187 F.3d 1354, at 69. See also <i>Miller v. Fortune Ins. Co.</i>, 484 So.2d 1221, 1223 (Fla.3d 86). Given the difference necessarily due a trial court's decision on this matter, and the absence of evidence that husband sought local counsel or that he did so with diligence, we cannot say the trial court abused its discretion when it denied husband's motion for a continuance.</i>	A trial court is not compelled to find good cause for a continuance based upon an asserted inability to procure local counsel unless the moving party has acted with diligence in seeking counsel.	Is a trial court compelled to find good cause based upon an asserted inability to procure local counsel when the moving party has acted with diligence in seeking counsel?	025656.docx	LEGALISE-00135597-LEGALISE-00135598	Condensed, SA	0.72	0	1	0	1	
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ROW	Judicial Opinion	WKS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
396	Ramirez v. Noble Energy, 521 S.W.3d 851	307A-483	The Texas Supreme Court has held that "[c]onstitutional imperatives favor the determination of cases on their merits rather than on harmless procedural defaults." Marino, 355 S.W.3d at 634. "Using deemed admissions as the basis for summary judgment therefore does not avoid the requirement of flagrant bad faith or callous disregard, the showing necessary to support a merits-preclusive sanction; it merely incorporates the requirement as an element of the movant's summary judgment burden." Tex. R. Civ. P. 168.3.	Using deemed admissions as the basis for summary judgment does not avoid the requirement of flagrant bad faith or callous disregard, the showing necessary to support a merits-preclusive sanction; it merely incorporates the requirement as an element of the movant's summary judgment burden. Tex. R. Civ. P. 168.3.	"Does using deemed admissions, as the basis for summary judgment not avoid the requirement of flagrant bad faith or callous disregard, the showing necessary to support a merits-preclusive sanction?"	029898.docx	LEGALAE-00135558- LEGALAE-00135559	SA, Sub	0.72	839	15,344	14,873	21,876	9,029
397	Ex parte Guidi AG, 183 So. 3d 47	307A-36.1	Here, the Rules' complaint alleges that G'del designed, manufactured, and sold the stamping press unit that, they say, caused Robert's injuries. In their answer to G'del's petition, the Rules' pleadings maintain that those facts support a "colorable claim of jurisdiction" over the Rules' claim. The Rules' answer also contains "deemed admissions." Specifically, the affidavit testimony of Kurt Beld, "a Member of Management for G'del," establishes that "G'del... did not design, build, or manufacture the Press Machine or any part that is related to the overhead roll-up doors." Instead, G'del manufactured the control system for conveyors running through the stamping press unit. The Rules' fail to dispute G'del's contention or to substantiate the jurisdictional allegations in their complaint with their own evidentiary submissions. In fact, the Rules' sole response to G'del's petition for a summary judgment is to argue that the Rules' summary judgment efforts are premature and that jurisdictional discovery is required. As the Rules' argue, this Court in Ex parte Bulfin, 936 So.2d 1042 (Mo.2006), embraced a permissive rule sustaining a plaintiff's right to conduct jurisdictional discovery when the plaintiff has alleged particular facts suggesting the possible existence of the requisite contacts with the forum state and when the basis for the plaintiff's claim of jurisdiction is not facially frivolous. 936 So.2d at 1048. As Bulfin notes, however, although the standard for permitting jurisdictional discovery is "quite low," the Rules' have not shown that the Rules' summary judgment efforts are premature and a request for discovery that is predicated "..." upon "bare," "attenuated," or "unsupported" assertions of personal jurisdiction "..." is due to be denied. 936 So.2d at 1047 (quoting Ex parte Troncalli Chrysler Plymouth Dodge, Inc., 876 So.2d 459 (Mo.2003), gesturing in turn to a condition to a joint motion for the purpose of raising money upon it, that the Rules' summary judgment efforts are premature and a request for discovery that is predicated "..." upon "bare," "attenuated," or "unsupported" assertions of personal jurisdiction "..." is due to be denied. 936 So.2d at 1047 (quoting Ex parte Troncalli Chrysler Plymouth Dodge, Inc., 876 So.2d 459 (Mo.2003), gesturing in turn to a condition to a joint motion for the purpose of raising money upon it, that the Rules' summary judgment efforts are 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400	Estate of Despain v. Avante Grp., 900 So.2d 637	115+151	768-71(1). Fla. Stat. (1999) (emphasis added); see also Fla. R.Civ.P. 1.90. Because the amount of an award may be a pittance to a rich man and ruinous to a poor one, the goal of punishment must of necessity take into account the financial worth of the wrongdoer. Accordingly, we conclude that punitive damages are available to a plaintiff who has been injured by a defendant's tortious conduct. The proper procedure in such cases is to ask leave to call them forth.	Although the punitive damages pleading statute is procedural in nature, it also provides a substantive right to parties not to be subjected to a punitive damages claim and attendant discovery of financial worth until the requisite showing under the statute has been made to the trial court. P.S.399.5 768-72.	Do parties have a substantive right not to be subjected to a punitive damages claim and attendant discovery of financial worth until the requisite showing under the punitive damages pleading statute has been made to the trial court?	031016.docx	LEGALASE-00137723- LEGALASE-00137724	SA, Sub	0.53	839 0	15,344 0	14,873	21,876	9,029	
401	Greaser v. Livingston, 239	307-245 (4)	It is true, as appellant contends, that ordinarily if a plaintiff wishes to amend his petition he must do so before the case goes to trial. However, where a party seeks to amend its petition by asking leave to withdraw his rest for that purpose and, if defendant makes it clear to court that he is not prepared to meet new issue, he should be granted continuance for that purpose on such terms as the court may deem just. However, such procedure is not necessary if the evidence relied on by plaintiff is already presented at trial record. The proper procedure in such cases is to ask leave to call them forth.	Ordinarily if plaintiff wishes to amend his petition by inserting new issue after the case goes to trial, he must do so before the case goes to trial. However, where a party seeks to amend its petition by asking leave to withdraw his rest for that purpose and, if defendant makes it clear to court that he is not prepared to meet new issue, he should be granted continuance for that purpose on such terms as the court may deem just, but such procedure is not necessary if evidence relied upon is already properly in record.	If a plaintiff wishes to amend his petition by inserting a new issue after the case goes to trial, he must do so by asking leave to withdraw his rest for that purpose?	Pretial Procedure - Memo #4579 - C- PB.docx	R055-003291079	Condensed, SA	0.28	0	1	0	1		
402	Agistor Credit Corp. v. Donahoe, 568 S.W.2d 422	307A-483	It is well-tattled that the effect of a party's failure to answer inquiries in adverse party's written request for admission or denial of relevant facts made under rule applicable pleadings of a party, so as to preclude its denial of such facts in its pleadings, is to constitute an admission of those facts. See, e.g., S.W.2d 2725, 228, writ refused. Also see Frieson v. Modern Mutual Health W.O.M.; Brooks v. Eaton Yale & Towne, Inc. (Wisno, Civ.App.1971), 474 S.W.2d 432(1, 323, no writ; Weaver v. Weaver (Fort Worth, Civ.App.1943) 171 S.W.2d 898, 901, ref. W.O.M.; Carpenter v. Globe Leasing Inc (Fort Worth, Civ.App.1967) 421 S.W.2d 413, 415, no writ; 45 Tex.Sur.2d Presiding, paragraph 97, pp. 34-3 & seq).	Effect of a party's failure to answer inquiries in adverse party's written request for admission or denial of relevant facts made under rule governing request for admissions is comparable to a "legal admission" made in applicable pleadings of a party, so as to preclude its denial of such facts on trial of cause. Rules of Civil Procedure, rule 329.	"Is the effect of a party's failure to answer inquiries in adverse party's written request for admission or denial of relevant facts made under rule made under rule governing request for admissions comparable to a "legal admission" made in applicable pleadings of a party?"	Pretial Procedure - Memo #4712 - C- Ad.docx	R055-003291186-R055-003291187	Condensed, SA, Sub	0.58	0	1	1	1	1	
403	Taylor v. Hubbell, 888 F.2d 106	413+1	This Arizona statute "rests upon the police power to regulate the status of employer and employee," (Dean Administration & Guarantee Corp. v. Industrial Commission, 1927 32 Ariz. 265, 267 P. 641, 644, 646, and grants to the Commission "full power, jurisdiction and authority to administer and enforce all laws for the protection of life, health, safety and welfare of employees in every case where such duty is not specifically delegated to any other board or administrator and enforce all laws for the protection of life, health, safety and welfare of employees in every case where such duty is not specifically delegated to any other board or officer." Ariz. Code, Sec. 56-907.	Arizona workmen's compensation statute rests upon police power to regulate status of employer and employee and grants to commission full power, jurisdiction and authority to administer and enforce all laws for protection of life, health, safety and welfare of employees in every case where such duty is not specifically delegated to any other board or administrator and enforce all laws for the protection of life, health, safety and welfare of employees in every case where such duty is not specifically delegated to any other board or officer. Fed Rules Civ.Proc. rule 12(b), 28 U.S.C.A. ARS. SS 23-107, 23-944, 23-1023, 23-1024.	Does the workmens compensation statute rest upon the police power to regulate the status of employers and employees?	047921.docx	LEGALASE-00137206- LEGALASE-00137208	SA, Sub	0.22	0	0	1	1	1	
404	Palmisano v. Toth, 624 A.2d 314	307A-36.1	If the motion to strike is denied, then the plaintiff may proceed to seek discovery relating to the wealth or ability of the defendant to respond to the motion to strike. If the motion to strike is granted, then there is no determination of the amount adequate to deter the defendant from similar activities in the future. If the motion to strike is granted, then no discovery will be permitted on the issue of the defendant's ability to respond to punitive damages.	Intention to strike punitive damage claim is denied, plaintiff may proceed to seek discovery relating to wealth or ability of defendant to respond to motion to strike. If the motion to strike is granted, then there is no determination of amount adequate to deter defendant from similar activities in future.	"If a motion to strike punitive damage claim is denied, may a plaintiff proceed to seek discovery relating to wealth or ability of a defendant to respond to a punitive damage award?"	032028.docx	LEGALASE-00138301- LEGALASE-00138302	Condensed, SA, Sub	0.34	0	1	1	1	1	
405	Richner v. Goffopoulos, 271 S.W.3d 32	307A-690	Generally, a nonsuit occurs when a court order terminates a cause of action without prejudice. Alternatively, a voluntary dismissal of a civil action constitutes a dismissal without prejudice and "without order of the court" any time prior to the introduction of evidence at trial. (Emphasis added). Accordingly, the savings statute allows a plaintiff to refile an action within one year of the date of the voluntary dismissal. Fuller v. Jefferys, 896 S.W.2d 764, 765 (Mo.App.1995).	Generally, a nonsuit occurs when a court order terminates a cause of action without prejudice; however a voluntary dismissal of a civil action constitutes a civil action without prejudice and "without order of the court" any time prior to the introduction of evidence at trial."	"Does a voluntary dismissal constitute a "nonsuit" because it allows a plaintiff to dismiss a civil action without prejudice and return to court any time prior to the introduction of evidence at trial?"	Pretial Procedure - Memo #4681 - C- Sub.docx	R055-003287711-R055-003287713	Condensed, SA, Sub	0.38	0	1	1	1	1	
406	Bryan v. Jefferys, 104 N.E. 2d 242	307A-74	(Mo.App.1995). Bryan against A.B. Jefferys, as a surety on the bond of B.M. Jefferys, who, it is alleged, agreed to submit all matters in dispute to arbitration, and afterwards, failed to pay plaintiff the amount of the award. By the terms of the submission, the award of the arbitrators in writing was to be final and conclusive. "and, if they cannot agree, to have the power to call in a third party; the award of any two of them in writing to be final and conclusive." Code N. C. "1337" provides that depositions taken by either party shall be admissible in evidence at trial, and, after having first given the parties or their attorneys at least one day's notice, and that all depositions when allowed by the clerk, or by the court upon appeal from the clerk's order, are legal evidence. If the witness be competent, judgment for plaintiff, and defense at appeal.	Judex Code, S.1337 providing that depositions shall be returned to the court, and opened and passed on by the clerk, after having first given the parties or their attorneys at least one day's notice, and that all depositions when allowed by the clerk, or by the judge upon appeal from the clerk's order, are legal evidence, if the witness be competent, a deposition without such notice, and which was not passed on by the clerk, is properly excluded.	"Shall depositions be returned to the court, and opened and passed on by the clerk, after having first given the parties or their attorneys at least one day's notice?"	032293.docx	LEGALASE-00139751- LEGALASE-00139752	Condensed, SA, Sub	0.48	0	1	1	1	1	

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407	Tetereault v. Franchise Tax Bd., 255 Cal. App. 2d 277	371+2005	There is no merit in this contention. The equal protection clause has a limited scope in relation to state taxation in view of the relatively extensive power of the states to tax. The applicable principles were summarized in <i>Allied Stores of Ohio, Inc. v. Ivers</i> , 358 U.S. 522, at pages 526 and 527, 79 S.Ct. 437, 3 L.Ed.2d 480, as follows: "The States have a very wide discretion in the laying of their taxes. When dealing with their proper domestic concerns, and not trenching upon the prerogatives of the National Government or violating the guarantees of the Federal Constitution, the States have the attribute of sovereign powers in devising their fiscal systems to ensure revenue and foster their local interests. Of course, the States, in the exercise of their taxing power, are subject to the requirements of the Equal Protection Clause of the Fourteenth Amendment. But that clause imposes no iron rule of equality prohibiting the flexibility and variety that are appropriate to reasonable schemes of state taxation. The State may impose different specific taxes upon different trades and professions and may vary the rate of excise upon various products. It is not required to resort to close distinctions or to maintain a precise, scientific uniformity with reference to composition, use or value. (Citations.) To hold otherwise would be to subject the essential taxing power of the State to an intolerable supervision, hostile to the basic principles of our government and wholly beyond the protection which the general clause of the Fourteenth Amendment was intended to assure." <i>Ohio Oil Co. v. Conway</i> , supra, 281 U.S. [146], at 159, 50 S.Ct. [310] at page 314 [741 Ed. 775.]	When dealing with proper domestic concerns and not trenching upon prerogatives of national government or violating guarantees of Federal Constitution, states have attributes of sovereign powers in devising their fiscal systems to ensure revenue and foster their local interests.	Do states have attributes of sovereign powers in devising their fiscal systems to ensure revenue and foster their local interests when dealing with proper domestic concerns?	042595.docx	LEGALCASE-00142724-LEGALCASE-00142725	Condensed, SA	0.84	839 0	1	15,344 0	14,873 0	21,876 1	9,029
408	MAGE v. Travis Cent. Appraisal Dist., 161 S.W.3d 617	154+2151	The intent of the administrative review process is to resolve the majority of tax protests at the administrative level and to relieve the burden on the court system. <i>Webb County Appraisal Dist. v. New Laredo Hotel</i> , 792 S.W.2d 952, 954 [Tex.1990]. The corollary to this rule is that judicial review of administrative orders is not available unless all administrative remedies have been pursued to the fullest extent. See <i>id.</i> If an agency has exclusive jurisdiction to determine a matter, a litigant's failure to exhaust administrative remedies before seeking judicial review of the administrative body's actions deprives the court of subject matter jurisdiction over claims within the body's exclusive jurisdiction, and the court must dismiss such claims without prejudice. <i>Tex. Gov't Code Ann.</i> , § 2001.171 [West 2000]; <i>Subaru</i> , 845 W.2d at 221; <i>Strayhorn v. Lexington Ints. Co.</i> , 138 SW 3d 772, 777 [Tex.App.-Austin 2004, pet. filed].	Does a litigant's failure to exhaust all administrative remedies before seeking judicial review deprive the court of subject matter jurisdiction over claims within the body's exclusive jurisdiction, and the court must dismiss such claims without prejudice. <i>Tex. Gov't Code Ann.</i>	Does a litigant's failure to exhaust all administrative remedies before seeking judicial review deprive the court of subject matter jurisdiction over claims within an agency's exclusive jurisdiction?	Perital Procedure - Memo # 5779 - C - NS.docx	RCS-00301555-RCS-00301556	SA, Sub	0.58	0	0	1	1	1	
409	Hillbrey Holding Corp. v. Estate of Curbishel, Engle 255 So. 2d 598	106+35	If the defendant's affidavit does fully dispute the jurisdictional allegations in the plaintiff's complaint, the burden shifts back to the plaintiff to prove by affidavit or other sworn proof that a basis for long-arm jurisdiction exists. <i>Venetian Salami</i> , 554 So.2d at 502; <i>Kin Young Indus. Co.</i> , 816 So.2d at 666. If the plaintiff fails to come forward with sworn proof to refute the allegations in the defendant's affidavit and to prove jurisdiction, the defendant's motion to dismiss must be granted. <i>Venetian Salami</i> , 554 So. 2d at 502; <i>Kin Young Indus. Co.</i> , 816 So.2d at 666; <i>Capital One Fin. Corp.</i> , 409 So.2d at 640; <i>Lumpke</i> , 602 So.2d at 423.	If a respondent defendant's affidavit in support of a motion to dismiss for lack of jurisdiction fully dispenses the jurisdictional allegations in the plaintiff's complaint, the burden shifts back to the plaintiff to prove by affidavit or other sworn proof that a basis for long-arm jurisdiction exists. <i>Venetian Salami</i> , 554 So.2d at 502; <i>Kin Young Indus. Co.</i> , 816 So.2d at 666. If the plaintiff fails to come forward with sworn proof to refute the allegations in the defendant's affidavit and to prove jurisdiction, the defendant's motion to dismiss must be granted. <i>Venetian Salami</i> , 554 So.2d at 502; <i>Kin Young Indus. Co.</i> , 816 So.2d at 666; <i>Capital One Fin. Corp.</i> , 409 So.2d at 640; <i>Lumpke</i> , 602 So.2d at 423.	"If a plaintiff fails to come forward with sworn proof to refute the allegations in the defendant's affidavit and to prove jurisdiction, the defendant's motion to dismiss must be granted."	033565.docx	LEGALCASE-00143598-LEGALCASE-00143599	SA, Sub	0.21	0	0	1	1	1	
410	Williams v. Beemiller, 100 A.D.3d 143	307+454	"However, in opposing a motion to dismiss pursuant to CPLR § 3211(a)(8) on the ground that discovery on the issue of personal jurisdiction is necessary, plaintiffs need not make a prima facie showing of jurisdiction, but instead must only set forth [] a sufficient start, and show [] their position not to be frivolous." [Lettieri v. Cushing, 80 A.D.3d 574, 575, 94 N.Y.S.2d 312 [internal quotation marks omitted]; see <i>Peterson v. Spartan Building Int'l v. General Mills</i> , 53 A.D.2d 1045, 1045, 386 N.Y.S.2d 164]. Thus, "plaintiffs need only demonstrate that facts may exist to exercise personal jurisdiction over the defendant." [Tucker v. Sanders, 75 A.D.3d 1096, 1096, 904 N.Y.S.2d 618 [emphasis added]; internal quotation marks omitted]; see <i>Peterson</i> , 33 N.Y.2d at 467, 354 N.Y.S.2d 903, 310 N.E.2d 513].	In opposing a motion to dismiss for lack of personal jurisdiction, on the ground that discovery on the issue of personal jurisdiction is necessary, plaintiffs need not make a prima facie showing of jurisdiction, but instead must set forth a sufficient start, and show their position is not frivolous. <i>McKinney's CPLR § 3211(a)(8)</i> .	"In opposing a motion to dismiss for lack of personal jurisdiction, on the ground that discovery on the issue of personal jurisdiction is necessary, need plaintiffs not make a prima facie showing of jurisdiction?"	Perital Procedure - Memo # 6689 - C - KG.docx	RCS-00328910-RCS-00328911	SA, Sub	0.63	0	0	1	1	1	
411	The Florida Bar v. Cushman, 752 So. 2d 515-40	307+746	First, we find that the relevant facts show the discretion in retaining a default judgment. The Florida Bar v. Cushman, 752 So. 2d 515-40, permits the court to impose sanctions for failing to attend a status conference. It is well established that sanctions under this rule can include striking pleadings and entering a default against the offending party; however, the sanction imposed must be commensurate with the offense, and this most severe sanction "should be used sparingly and reserved to those instances where the conduct is flagrant, willful or persistent." <i>Dineford v. Barnett Bank</i> , 694 So.2d 822, 824 (Fla. 2d DCA, 1997) (quoting <i>Florida Bar v. Cushman</i> , 752 So. 2d 515-40, at 519-520 (Fla. 2d DCA, 1997)).	Court may impose sanctions for party's failure to attend status conference, including striking pleadings and entering a default against the offending party; however, the sanction imposed must be commensurate with the offense, and this most severe sanction should be used sparingly and reserved to those instances where the conduct is flagrant, willful, or persistent. <i>West's F.S.A. RCP Rule 1.200(c)</i> .	"Can a court impose sanctions for party's failure to attend status conference, including striking pleadings and entering a default against the offending party?"	Perital Procedure - Memo # 6836 - C - SB.docx	RCS-00304909-RCS-00304910	Condensed, SA	0.6	0	1	0	1	1	
412	Flagg v. Auld, 198 So. 3d 666	307+446	The dismissal of an action based on the violation of a discovery order will constitute an abuse of discretion where the trial court fails to make express written findings of fact supporting the conclusion that the failure to obey the court order demonstrated willful or deliberate disregard. Express findings are required to ensure that the trial judge has consciously determined that the failure was more than a mistake, neglect, or inadvertence, and to assist the reviewing court to the extent the record is susceptible to more than one interpretation.	The dismissal of an action based on the violation of a discovery order will constitute an abuse of discretion where the trial court fails to make express written findings of fact supporting the conclusion that the failure to obey the court order demonstrated willful or deliberate disregard. Express findings are required to ensure that the trial judge has consciously determined that the failure was more than a mistake, neglect, or inadvertence, and to assist the reviewing court to the extent the record is susceptible to more than one interpretation.	Is an abuse of the trial court's discretion to dismiss an action for failure to obey a court order without making express written findings of fact supporting the conclusion?	034614.docx	LEGALCASE-00144562-LEGALCASE-00144563	SA, Sub	0.4	0	0	1	1	1	

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413	Zdzicki v. Apella, 209 Minn. 385	307A-513	Rule 41.02(1). Rules of Civil Procedure, provides as follows: "The court may on its own motion, or upon motion of a party, and upon such notice as it may prescribe, dismiss an action or claim for failure to prosecute or to comply with these rules or any order of the court." A dismissal under this rule is an exercise of discretionary authority which will be sustained only if the court is satisfied that the party has acted in a most inopportune manner. <i>See Teleflex Corp. v. Teleflex Corp.</i> , 205 Minn. 576, 205 N.W.2d 127 (1973); <i>Kelley v. St. John's Lutheran Hospital Ass'n.</i> , 387 Minn. 187, 187 N.W.2d 420 (1970). The decision to dismiss necessarily depends upon the circumstances peculiar to each case, justice and equity to each party, and considered "with reference to" just, speedy, and inexpensive disposition of the case and the policy underlying the dismissal rules of preventing harassment and the policy of the rules of the court. <i>See General Motors Corp.</i> , 277 Minn. 278, 283, 152 N.W.2d 364, 368 (1967).	Dismissal for failure to prosecute or to comply with rules or order of court necessarily depends upon circumstances peculiar to each case, justice and equity to each party, and must be considered with reference to just, speedy and inexpensive disposition of case and policy underlying dismissal rules of preventing harassment and unreasonable delays in litigation.	Does dismissal for failure to prosecute or to comply with rules or order of court necessarily depend upon circumstances peculiar to each case?	035106.docx	LEGALCASE-00146096-LEGALCASE-00146097	SA, Sub	0.65	839	15,344	14,873	21,876	9,029
	Rosa v. Florida Power & Light Co., 636 So. 2d 60	307A-590.1	In <i>Del Duca v. Anthony</i> , 587 So.2d 1306 (Fla.1991), the supreme court adopted the test set forth in <i>Anthony v. Schmitt</i> , 557 So.2d 566 (Fla. 2d DCA 1990), for determining whether discovery activity constitutes harassment. In <i>Anthony v. Schmitt</i> , the court stated that the test is: "The taking toward allowing the trial court to consider whether the activity is designed toward concluding the case on the merits or whether it is taken in bad faith to avoid the application of rule 1.420(c). See 557 So.2d at 660. The same inquiry is applicable in this instance. The only record activity in the year preceding the motion to dismiss was a motion in limine filed by Mrs. Rosa on October 13, 1992.	Indetermining whether discovery activity is sufficient record activity to predicate dismissal for failure to prosecute, court may consider whether activity is designed toward concluding case on merits or whether it is taken in bad faith to avoid the application of rule 1.420(c). See 557 So.2d at 660. The same inquiry is applicable in this instance. The only record activity in the year preceding the motion to dismiss was a motion in	"In determining whether discovery activity is sufficient record activity to predicate dismissal for failure to prosecute, court may consider whether activity is designed toward concluding case on merits or whether it is taken in bad faith to avoid the application of rule 1.420(c). See 557 So.2d at 660. The same inquiry is applicable in this instance. The only record activity in the year preceding the motion to dismiss was a motion in	11088.docx	LEGALCASE-00094220-LEGALCASE-00094221	SA, Sub	0.5	0	0	1	1	
414														
	Bent v. City of Evanston, 203 Ill. App. (1st) 23763	307A-561.1	Plaintiff's complaint was dismissed pursuant to section 7-519(a)(9) of the Code of Section 2-619(b)(9) motion admits the legal sufficiency of the complaint, but asserts that it is barred by some other affirmative matter. <i>Brennan v. Kadner</i> , 351 Ill.App.3d 963, 967, 286 Ill. Dec. 725, 814 N.E.2d 951 (2004). In considering the motion, all well-pleaded facts and reasonable inferences drawn therefrom are admitted, and all pleadings and supporting documents are construed in a light most favorable to the nonmoving party. Id. When reviewing a section 2-619 motion to dismiss, the court must consider the complaint in the light most favorable to the plaintiff and must not conclude dismissal and whether the affirmative matter negates the plaintiff's cause of action completely or relates critical conclusions of law or conclusions of material unsupported fact. <i>Turner v. 1212 S. Michigan Partnership</i> , 355 Ill.App.3d 885, 892, 293 Ill.Dec. 476, 823 N.E.2d 1062 (2005). We review de novo the dismissal of a complaint pursuant to section 2-619. <i>Brennan</i> , 351 Ill.App.3d at 967, 286 Ill.Dec. 725, 814 N.E.2d 951.	When reviewing motion for involuntary dismissal based upon certain defects or defenses, Appellate Court must consider whether a genuine issue of material fact exists which precludes dismissal and whether affirmative matter negates plaintiffs cause of action completely or relates critical conclusions of law or conclusions of material unsupported fact. S.H.A. 735 ILCS 5/2-619.	Should the court consider whether affirmative matter negates plaintiffs cause of action completely or relates critical conclusions of law or material unsupported fact?	11254.docx	LEGALCASE-00094355-LEGALCASE-00094357	SA, Sub	0.65	0	0	1	1	
415														
	People, Prop. Owners & Citizens of Pleasant Valley Sch. Dist. v. Burney, 151 Pa. Cmwh. 124	307A-584	The decision to enter a judgment of non pros because of the failure of a party to proceed with its action within a reasonable time rests within the discretion of the trial court. <i>First Valley Bank v. Steinmann</i> , 153 Pa.Superior Ct. 8, 384 A.2d 949 (1978). The exercise of this discretion will not be disturbed on appeal unless it is apparent that there has been an abuse of that discretion. Id. A court may properly enter a judgment of non pros when a party fails to proceed with its action within a reasonable time in failing to proceed with reasonable promptitude, and there has been no compelling reason for the delay which has caused some prejudice to the adverse party such as death of or unexplained absence of material witnesses. <i>James Bros. Lumber Co. v. Union Banking & Trust Co. of Dubois</i> , 432 Pa. 129, 247 A.2d 587 (1968); <i>Orthoff v. Keene Industrial Insulation</i> , 324 Pa.Superior Ct. 123, 471 A.2d 493 (1984).	Court may properly enter judgment of non pros when party to proceeding has shown want of due diligence in failing to proceed with delay which has caused some prejudice to adverse party such as death of or unexplained absence of material witnesses.	Can court properly enter a judgment of non pros when party to the proceeding has shown a want of due diligence in failing to proceed with reasonable promptitude?	016337.docx	LEGALCASE-00149049-LEGALCASE-00149050	Condensed, SA	0.65	0	1	0	1	
416														
	Fewell v. Eastchester Police Dept., 127 A.D.3d 1131	307A-622	In considering a motion to dismiss pursuant to CPLR § 3211(a)(7), the court must "accept the facts as alleged in the complaint as true, accord the plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (<i>Norion v. City of New York</i> , 9 NY 3d 825, 827, 842 NY 5.2d 756, 874 N.E.2d 702 [internal quotation marks omitted]; see <i>Leon v. Marine, 84 N.Y.2d 883, 87-88, 614 N.Y.S.2d 972, 638 N.E.2d 531</i> ; <i>Primack Realty of N.Y., LLC v. S. Butler, LLC</i> , 12-20 A.D.2d 962, 971 N.Y.S.2d 373). Although the court must accept the facts as alleged in the complaint as true, any favorable inference (see <i>Gordon v. Goldberg</i> , 30 A.D.3d 372, 817 N.Y.S.2d 322), "bare legal conclusions as well as factual claims fully contradicted by the record are not entitled to a such consideration" (<i>Galasso, 83 A.D.3d 626, 628, 921 N.Y.S.2d 100</i> ; "nor are legal conclusions or factual claims which are inherently incredible entitled to any such favorable inference." <i>New York State Bd. of Elections</i> , 126 A.D.3d 777, 778, 5 N.Y.S.3d 484, 486, 969 N.Y.S.2d 332, 969 N.Y.S.2d 332, 969 N.Y.S.2d 332, 969 N.Y.S.2d 332). "Where evidentiary material is submitted and considered on a motion to dismiss a complaint pursuant to CPLR § 3211(a)(7), and the motion is not converted into one for summary judgment, the question becomes whether the plaintiff has a cause of action, not whether the plaintiff has started one and, unless it has been shown that a material fact is claimed by the plaintiff to be one is not a fact at all and unless it can be said that no significant dispute exists (see <i>Gordon v. Goldberg</i> , 30 A.D.3d 372, 817 N.Y.S.2d 322; <i>Primack Realty of N.Y., LLC v. S. Butler, LLC</i> , 12-20 A.D.3d 962, 971 N.Y.S.2d 373).	"On a motion to dismiss a complaint for failure to state a cause of action, does the question become whether the plaintiff has a cause of action?"	Petrial Procedure - Memo R 8385 - C - PC_58760.docx	ROSS-003506423-R055-003308425	Condensed, SA	0.73	0	1	0	1		
417														

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences	
418	Gorman v. Am. Honda Motor Co., 302 Mich. App. 113	307A-679	MCR 2.116(c)(8) permits a trial court to grant summary disposition when an opposing party has failed to state a claim on which relief can be granted. Thus, a motion under this rule tests the legal sufficiency of a claim. Computer Network, 263 Mich.App. at 312, 696 N.W.2d 49. The motion may not be supported or opposed with affidavits, admissions, or other documentary evidence, and must be decided on the basis of the pleadings alone. Id.; MCR 2.116(c)(2). The trial court reviewing the motion must accept as true all factual allegations supporting the claim, and any reasonable inferences or conclusions that might be drawn from those facts. Detroit Int'l Bridge Co. v. Commodities Export Co., 279 Mich.App. 662, 670, 760 N.W.2d 565 (2008). A motion for summary disposition under MCR 2.116(c)(8) may be granted only when a claim is so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. Attorney General v. Merck Sharp & Dohme Corp., 292 Mich.App. 1, 8, 807 N.W.2d 343 (2011).	The trial court reviewing a motion for summary disposition on the basis of failure to state a claim for which relief can be granted must accept as true all factual allegations supporting the claim, and any reasonable inferences or conclusions that might be drawn from those facts. MCR 2.116(c)(8).	Should the trial court reviewing a motion for summary disposition on the basis of failure to state a claim for which relief can be granted accept as true all factual allegations supporting the claim?	037236.docx	LEGALASE-00151072- LEGALASE-00151073	Condensed, SA, Sub	0.71	839	1	15,344	14,873	21,876	9,029
419	Sethness v. Sethness, 62 N.C. App. 676	307A-622	In ruling on a motion to dismiss a complaint for failure to state a claim upon which relief can be granted, the test to be applied by the court is whether the complaint alleges a set of facts which would entitle the plaintiff to some relief. The allegations contained in a complaint are liberally construed and treated as true, but conclusions of law or unwarranted deductions of fact are not admitted. Rules Civ.Proc., Rule 12(b)(6), G.S. 5-1A-1.	In ruling on a motion to dismiss a complaint for failure to state a claim upon which relief can be granted, the court must accept as true all well-pleaded facts and all reasonable inferences drawn therefrom alleged by the party opposing the motion.	In ruling on a motion to dismiss a complaint for failure to state a claim upon which relief can be granted, does the court accept as true all pleaded facts and all reasonable inferences drawn therefrom alleged by the party opposing the motion?	038524.docx	LEGALASE-00154481- LEGALASE-00154482	Condensed, SA, Sub	0.48	0	1	1	1	1	1
420	Hawaii Auto. Retail Gasoline Dealers Ass'n v. Brodie, 2 Haw. App. 99	307A-583	MCR 2.116(c)(8) permits a trial court to grant summary disposition when an opposing party has failed to state a claim for which the court must accept as true all well-pleaded facts and inferences drawn therefrom. Whether the complaint alleges a set of facts which would entitle the plaintiff to some relief. Carolina Builders Corp. v. AAA Drywall, Inc., 43 N.C.App. 444, 259 S.E.2d 364 (1979); Yates v. City of Raleigh, 46 N.C.App. 221, 264 S.E.2d 798 (1980). For purposes of testing the sufficiency of a complaint to withstand a motion to dismiss under 12(b)(6), the allegations contained therein are liberally construed and treated as true. Shoffner Industries, Inc. v. W.B. Lloyd Construction Co., 42 N.C.App. 259, 257 S.E.2d 50, disc. rev. denied, 298 N.C. 296, 295 S.E.2d 301 (1979). However, "conclusions of law or unwarranted deductions of fact are not admissible."	Motion to dismiss for failure to prosecute is matter addressed to court's discretion and is properly granted where there is clear record of delay or contumacious conduct and where lesser sanctions would not serve best interests of justice. Rules of Civil Procedure, Rule 41(b).	Is motion to dismiss for failure to prosecute properly granted where there is clear record of delay or contumacious conduct and where lesser sanctions would not serve best interests of justice?	Pretrial Procedure - Memo # 9679 - C- SB_61580.docx	ROSS-003299237-A055-003299238	Order, SA	0.21	1	0	0	1	1	1
421	Timmins v. Lindsey, 310 S.W.3d 834	307A-679	In considering whether to dismiss a claim, the court must accept as true all well-pleaded facts and all reasonable inferences drawn therefrom. Whether the complaint alleges a set of facts which would entitle the plaintiff to some relief. Carolina Builders Corp. v. AAA Drywall, Inc., 43 N.C.App. 444, 259 S.E.2d 364 (1979); Yates v. City of Raleigh, 46 N.C.App. 221, 264 S.E.2d 798 (1980). For purposes of testing the sufficiency of a complaint to withstand a motion to dismiss under 12(b)(6), the allegations contained therein are liberally construed and treated as true. Shoffner Industries, Inc. v. W.B. Lloyd Construction Co., 42 N.C.App. 259, 257 S.E.2d 50, disc. rev. denied, 298 N.C. 296, 295 S.E.2d 301 (1979). However, "conclusions of law or unwarranted deductions of fact are not admissible."	In considering whether to dismiss a claim for failure to state a claim upon which relief can be granted, the court must accept as true all well-pleaded facts and all reasonable inferences drawn therefrom alleged by the party opposing the motion.	For purposes of a motion to dismiss for failure to state a claim upon which relief can be granted, does the court accept as true all facts well-pleaded in the complaint and the reasonable inferences therefrom?	024467.docx	LEGALASE-00155859- LEGALASE-00155860	Condensed, SA	0.63	0	1	0	1	1	1
422	Tercero v. Roman Catholic Diocese of Norwich, Conn., 327 N.W.2d 994	307A-25	When a timely challenge is raised under Rule 1-012(b)(2) contesting the existence of personal jurisdiction, the party asserting jurisdiction has the burden of establishing such fact. When ruling upon a motion to dismiss a claim, the court must accept as true all well-pleaded facts and inferences drawn therefrom. Whether the complaint alleges a set of facts which would entitle the plaintiff to some relief. Carolina Builders Corp. v. AAA Drywall, Inc., 43 N.C.App. 444, 259 S.E.2d 364 (1979); Yates v. City of Raleigh, 46 N.C.App. 221, 264 S.E.2d 798 (1980). For purposes of testing the sufficiency of a complaint to withstand a motion to dismiss under 12(b)(6), the allegations contained therein are liberally construed and treated as true. Shoffner Industries, Inc. v. W.B. Lloyd Construction Co., 42 N.C.App. 259, 257 S.E.2d 50, disc. rev. denied, 298 N.C. 296, 295 S.E.2d 301 (1979). However, "conclusions of law or unwarranted deductions of fact are not admissible."	When ruling upon a motion to dismiss for lack of personal jurisdiction, the trial court has discretion to permit discovery to help decide the issue or resolve the issue either upon written affidavits or through a pretrial evidentiary hearing. N.H.M.A. Rule 1-012, subd. 4(b).	When ruling upon a motion to dismiss, does a trial court have discretion to permit discovery to help decide an issue or resolve an issue either upon written affidavits or through a pretrial evidentiary hearing?	024581.docx	LEGALASE-00156002- LEGALASE-00156003	SA, Sub	0.68	0	0	1	1	1	1
423	Turner v. Turner, 216 A.L.2d 910	307A-594.1	If a plaintiff fails to take proceedings for the entry of judgment within one year after [a] default, the complaint will be dismissed as abandoned unless plaintiff can establish that (1) the failure to seek a default judgment within one year after the default is excusable and (2) the cause of action is meritorious (CPA 8.3215(c); see, Blades v. Butler Cab Corp., 176 A.2d 698, 699, 375 N.Y.S.2d 84, N.Y. Sup. Ct., 1974, 35 A.D.2d 880, 332 N.Y.S.2d 810, Morton v. Morton, 138 A.2d 900, 524 N.Y.S.2d 928, Sanders v. Marino Falcone Brick Contr., supra). The contention of plaintiff that her delay in prosecuting the action is excusable because she and Turner had entered into a stipulation extending Turner's time to a newer the complaint is without merit.	If plaintiff fails to take proceedings for entry of judgment within one year after default, complaint will be dismissed as abandoned unless plaintiff can establish that failure to seek default judgment was excusable and cause of action is meritorious. McKinney's CPA 8.3215(c).	"If a plaintiff fails to take proceedings for entry of judgment within one year after [a] default, will the complaint be dismissed as abandoned unless a plaintiff can establish that failure to seek default judgment was excusable?"	024866.docx	LEGALASE-00156863- LEGALASE-00156864	Condensed, SA, Sub	0.67	0	1	1	1	1	1
424	Cedeno v. Torres v. Soto v. Kerschner, 586 F. Supp. 345-43	2571-82(2)	"[P]rovides is the backdrop for determining whether the right to arbitrate has been waived by litigation." Id. at 222. To make this determination, courts consider a list of factors, including: 1) The timeliness or lack thereof of a motion to arbitrate; 2) The degree to which the party seeking to compel arbitration has contested the merits of its opponent's claims; 3) Whether that party has informed its adversary of its intention to seek arbitration even if it has not yet filed a motion to stay the district court proceedings; 4) The extent of its non-movements in pursuing the trial court proceedings; 5) The extent to which both parties have engaged in discovery.	Provides is the backdrop for determining whether the right to arbitrate has been waived by litigation; to make this determination, courts consider factors, including: (1) timeliness or lack thereof of a motion to arbitrate; (2) the degree to which the party seeking to compel arbitration has contested the merits of its opponent's claims; (3) whether that party has informed its adversary of its intention to seek arbitration even if it has not yet filed a motion to stay the district court proceedings; (4) the extent of its non-movements in pursuing the trial court proceedings; (5) the extent to which both parties have engaged in discovery.	What are the factors relevant to the pre-judgment inquiry in arbitration?	008900.docx	LEGALASE-00165077- LEGALASE-00165078	Condensed, SA	0.06	0	1	0	1	1	1
425	United States v. El-Masri, 664 F.3d 467	133SH+100.1	Although the Double Jeopardy Clause prohibits a second prosecution following an acquittal, a retrial is not automatically barred when a criminal proceeding is terminated without finally resolving the merits of the charges against the accused." Id. at 580 (quoting Aronson v. Washington, 434 U.S. 497, 505, 98 S.Ct. 824, 54 L.Ed.2d 717 (1978)).	Although the Double Jeopardy Clause prohibits a second prosecution following an acquittal, a retrial is not automatically barred when a criminal proceeding is terminated without finally resolving the merits of the charges against the accused. U.S.C.A. Const.Amend. 5.	"Although the Double Jeopardy Clause prohibits a second prosecution following an acquittal, is a retrial not automatically barred when a criminal proceeding is terminated without finally resolving the merits of the charges against the accused?"	Double Jeopardy - Memo #76 - C- TL_68255.docx	ROSS-00327970-A055-00327971	SA, Sub	0.23	0	0	1	1	1	1

ROW	Judicial Opinion	WKS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
426	Corn. v. Cobb, 284 A.3d 930	13.5H.95.1	When a trial court declares a mistrial without manifest necessity, the Commonwealth is forbidden from retrying the defendant. Commonwealth v. McCord, 200 A.3d 938 (Pa. Super. 1997); U.S.C.A. Const. Amend. 5-PA. Const. Article 1, § 20. The determination by a trial court to declare a mistrial after jeopardy has attached is not one to be lightly impeded; additionally, failure to consider if there are less drastic alternatives to trial creates doubt about the propriety of the trial judge's decision to declare a mistrial. The court failed to properly consider the defendant's significant interest in whether or not to take the case from the jury. U.S.C.A. Const. Amend. 5; Const. Art. 1, § 10.	The determination by a trial court to declare a mistrial after jeopardy has attached is not one to be lightly undertaken, since the defendant has a substantial interest in having his fate determined by the jury first. Alternatives to trial create doubt about the propriety of the trial judge's decision to declare a mistrial. The court failed to properly consider the defendant's significant interest in whether or not to take the case from the jury. U.S.C.A. Const. Amend. 5; Const. Art. 1, § 10.	Does failure to consider if there are less drastic alternatives to a mistrial create doubt about the propriety of the exercise of the trial judge's discretion?	Double jeopardy - Memo 494 - C - 5B_68273.docx	ROSS-003280801-ROSS-003308012	SA, Sub	0.38	839	15,344	14,873	21,876	9,029
427	State v. Vanhook, 216 S.W.3d 729	110+1028	In our review we discern that Appellant's actual complaint relates to the trial court's failure to sua sponte intervene in closing argument to prevent the State from making the type of retaliatory argument that was made. Taylor, 166 S.W.3d 608 (quoting State v. Tiley, 104 S.W.3d 814, 819 (Mo.App. 2004)). The court failed to consider the defendant's significant interest in having a fair trial, genuine on the verdict, and then seek favorable results on appeal.	Appellate courts are wary of claims that a trial court erred in failing to sua sponte make objections and rulings in the closing argument of a criminal case; to convict a trial court of an error not put forth by the defendant allows an accused to stand mute when incidents unfavorable to the defendant are being tried, genuine on the verdict, and then seek favorable results on appeal.	Are appellate courts especially wary of a claim that the trial court failed to declare a mistrial sua sponte?	015670.docx	LEGALEASE-00166393-LEGALEASE-00166394	Condensed, SA	0.66	0	1	0	1	
428	State ex rel. Carden-Clark v. Miami Hosp. v. Hill, 205 W. Va. 126	307A+560	In State ex rel. Charleston Area Medical Center v. Kaufman, 197 W. Va. 262, 975 S.W.3d 14 (1998), the court determined the requirement that the State prove its case by a preponderance of the evidence in the West Virginia Rule of Civil Procedure is mandatory in a case in which good cause for the lack of service is not shown, and a plaintiff whose case is subject to dismissal for noncompliance with Rule 4(f) has two options to avoid the consequences of the dismissal: (1) To timely show good cause for not having effected service of the summons and complaint, or (2) to refile the action before any time cause for not having effected service of the summons and complaint, or (2) to refile the action before any time defenses arise and timely effect service under the new complaint. Rules Civ Proc. Rule 4(f) (1997).	Dismissal for failing to timely serve process on a defendant after an action is filed is mandatory in a case in which good cause for the lack of service is not shown, and a plaintiff whose case is subject to dismissal for noncompliance has two options to avoid the consequences of the dismissal: (1) To timely show good cause for not having effected service of the summons and complaint, or (2) to refile the action before any time defenses arise and timely effect service under the new complaint. Rules Civ Proc. Rule 4(f) (1997).	Is dismissal for failing to timely serve process on a defendant after an action is filed is mandatory in a case in which good cause for the lack of service is not shown?	Pretail Procedure - Memo F 4601 - C - 5A0.docx	ROSS-0032808200-ROSS-003282901	SA, Sub	0.23	0	0	1	1	
429	Reeves v. City of Corpus Christi, 518 S.W.3d 594	307A+681	The rule provides in part: [A] party may move to dismiss a cause of action on the grounds that it has no basis in law or in fact. A cause of action has no basis in law if the allegations, taken as true, together with inferences reasonably drawn from them, do not entitle the claimant to the relief sought. A cause of action has no basis in fact if no reasonable person could believe the facts pleaded. Id. R. 93A.1. The court may not consider the pleadings in the light of the evidence. The court may not consider solely on the pleading of the cause of action, together with any pleading exhibits permitted by the rules of civil procedure. Id. R. 93A.6. In re Built, 495 S.W.3d 455, 461 (Tex. App. Corpus Christi 2016, orig. proceeding); see also Tex. R. Civ. P. 59 (permitting a party to attach to a pleading certain instruments "In letters, accounts, bonds, mortgages, records, and all other written instruments" which constitute the claim sued on or a matter set up as a defense, and providing that such instruments "may be made a part of the pleadings").	In ruling on a motion to dismiss an action on grounds that it is without basis in law or in fact, the court may not consider evidence, and must decide the motion based solely on the pleading of the cause of action, together with any pleading exhibits permitted by the rules of civil procedure. Tex. R. Civ. P. 93A.	"In ruling on a motion to dismiss an action on grounds that it is without basis in law or in fact, can the court not consider evidence, and must decide the motion based solely on the pleading of the cause of action?"	017805.docx	LEGALEASE-00152004-LEGALEASE-00152005	Condensed, SA	0.7	0	1	0	1	
430	United States v. Biermann, 678 F. Supp. 1437	110+97183	As a general matter, international law prohibits any country from asserting jurisdiction over foreign vessels on the high seas. See United States v. Marino Garcia, 679 F.2d 1373, 1380 (11th Cir. 1982). Defendants concede that this general rule does not apply if a "sufficient nexus" exists between the alleged offense and the United States. The court's conclusion was not within the United States. See Peterson, 832 F.2d at 493; Restatement (Second) of Foreign Relations "18. However, defendants argue that this exception is not present here, because the United States has not charged defendants with conspiracy to import a controlled substance, see 21 U.S.C. "963, but rather has proceeded under Section 1903, which proscribes conspiracy and possession with intent to distribute. Whether the facts necessary to establish jurisdiction must also include the intent to distribute is not a question that the court has answered here. Rather, this court is of the opinion that established principles of protective jurisdiction support the extraterritorial reach of Section 1903.	As general matter, international law prohibits any country from asserting jurisdiction over foreign vessels on high seas, but general rule does not apply if sufficient nexus indicates that acts aboard foreign vessel are likely to have criminal consequences within United States.	Does international law apply if a sufficient nexus indicates that acts aboard foreign vessel are likely to have criminal consequences within United States?	International Law - Memo F 819 - C - ANC.docx	ROSS-003280808-ROSS-003285100	Condensed, SA	0.76	0	1	0	1	
431	Sporn v. W.C.A.B., 680ger Court 1, 553 Pa. 44	413+1	Accordingly, benefits allow further the overall remedial purposes of the Workers' Compensation Act. The Act's objective is to provide a scheme to provide compensation for work-related injuries in place of the common law process where the employee must sue the appropriate parties for damages. See Hanke v. Wilkes-Barre/Scranton Int'l Airport, 532 Pa. 494, 500, 616 A.2d 649, 616 (1992) (discussing general scheme of Act). Employees pay benefits at a set rate and they are immune from common-law liability. See id. Precluding Appellant from collecting death benefits goes against this remedial objective as Appellant is unable to pursue a remedy at common law.	Workers' Compensation Act establishes a quick and inexpensive scheme to provide compensation for work-related injuries in place of the common law process where the employee must sue the appropriate parties for damages, and employees pay benefits at a set rate and are immune from common-law liability. 77 P.S. § 51, et seq.	Does the Workers' Compensation Act establish a quick and inexpensive scheme to provide compensation for work-related injuries in place of the common law process where the employee must sue the appropriate parties for damages?	Workers' Compensation - Memo 477 ANC.docx	ROSS-003286351-ROSS-003285515	Condensed, SA	0.52	0	1	0	1	

ROW	Judicial Opinion	WKS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
432	In re Dudley, 502 E.R. 259	366+1	A nonholder in possession of a non-negotiated negotiable instrument can acquire the rights of a holder through the common law doctrine of subrogation, which allows the payor on a debt to step into the shoes of the creditor "as if the party obligated to pay, although often stemming from contractual relationships, such as here, the doctrine of subrogation would apply." (1) The right of subrogation is a legal fiction created by equity to prevent unjust enrichment. (2) The right of subrogation will apply where the obligee has paid the debt of another, (3) the obligee was not negligent in making the payment, (4) the obligee's payment was made under compulsion or necessity, and (5) subrogation would not work any injustice to the rights of the junior lienholder.	Under Massachusetts law, a five-factor test is used in determining whether equitable subrogation applies, though the doctrine may still apply absent one of the five factors, pursuant to which subrogation will apply if: (1) the subrogee made the payment to protect his or her own interest; (2) the request for relief came from the debtor; (3) the obligee was not negligent in making the payment; (4) the obligee's payment was made under compulsion and; (5) subrogation would not work any injustice to the rights of the junior lienholder.	What is the five-factor test used in determining whether equitable subrogation applies?	Subrogation - Memo 274 - ANG C.docx	ROSS-00328562-ROSS-00328563	Condensed, SA, Sub	0.67	839	15,344	14,873	21,876	9,029
433	Anderson Contracting v. Williams, 776 N.W.2d 846	307A-36.1	The defendants also assert the district court should have considered the opportunity cost of the unpaid debt as part of its calculation of damages. It would be possible to calculate class-wide opportunity costs. The EPDM manufacturer expert, Dr. Snyder, "is a well-versed and persuasive manufacturer expert." Dr. Snyder's conclusions on two key issues: First, Dr. Snyder criticized Dr. Conner's lack of knowledge of the EPDM industry and channels of distribution. Second, Dr. Snyder claimed Dr. Conner's methods are simplistic and insufficient to calculate class-wide damages in an industry as complex and wide-ranging as the EPDM industry. We conclude that Dr. Conner's calculations were flawed because they failed to take into account the market value of the product at the time of the trial court when making a class certification decision, but the second goes to the heart of the merits of the case, and as such, should be deferred by the trial court, even under the standard articulated in IQO. While a court should consider all of the relevant evidence submitted in IQO, while a certification stage and resolve any factual disputes necessary to determine if the class certification requirements are met, the court "should not assess any aspect of the merits unrelated to a class certification motion." The court should focus on the elements of the motion, and the extent of a hearing "to assure that a class certification motion does not become a pretext for a partial trial of the merits." Id.	While a court should consider all of the relevant evidence admitted at the trial court stage, it need not resolve every factual dispute necessary to determine if the class certification requirements are met, the court should not assess any aspect of the merits unrelated to a class certification requirement and has the discretion to limit discovery.	Should the court assess any aspect of the merits unrelated to a class certification requirement and has the discretion to limit discovery?	Prelim Procedure - 4509 - C - NC.docx	ROSS-00329107-ROSS-00329107A	Condensed, SA	0.66	0	1	0	1	
434	Velaquez v. Serrano, 43 So. 3d 62	366+1	We review an order granting summary judgment de novo. See Vialda County v. Aberdeen at Grand Beach, L.P., 760 S.D.126, 130 (Fla.3d, 2012). Considerable weight already is afforded to the opinion of the trial judge. In this case, the plaintiff sought summary judgment on another with reference to a lawful claim or right. Subrogation arises by operation of law, where one having a liability or a right or a fiduciary relation in the premises pays a debt due by another under such circumstances that he is, in equity, entitled to the security or obligation held by the creditor whom he has paid.	Equitable subrogation arises by operation of law, where one having a liability or a right or a fiduciary relation in the premises pays a debt due by another under such circumstances that he is, in equity, entitled to the security or obligation held by the creditor whom he has paid.	"Does one having a liability or a right in the premises pay a debt due by another under such circumstances that he is, in equity, entitled to the security or obligation held by the creditor whom he has paid under the doctrine of "equitable subrogation?"	Subrogation - Memo 275 - ANG C.docx	ROSS-003324743-ROSS-003324744	Condensed, SA	0.51	0	1	0	1	
435	Beatty v. Washington State Dept. of Transportation, 2013 Wash. App. 543	149E-680	The general rule in both administrative and judicial SEPA appeals is that the government agency has the burden of proving that there is no violation of SEPA. (State ex rel. Friend & Rhako Enterprises v. Grays Harbor County, 122 Wash.2d 344, 249, 857 P.2d 1039 (1993)). The purposes of this linkage requirement are to "preclude judicial review of SEPA compliance before an agency has taken final action on a proposal, foreclose multiple lawsuits challenging a single agency action, and deny the existence of "orphan" SEPA claims unrelated to any government action." Grays Harbor County, 122 Wash.2d at 351, 857 P.2d 1039 (1993).	The general rule in both administrative and judicial State Environmental Protection Act (SEPA) appeals is that the government agency has the burden of proving that there is no violation of SEPA compliance before an agency has taken final action on a proposal, foreclose multiple lawsuits challenging a single agency action, and deny the existence of "orphan" SEPA claims unrelated to any government action." West's RCWA 43.21C.010 et seq.	Should State Environmental Protection Act (SEPA) appeals require a review of SEPA issues with the related governmental action?	01059.docx	LEGAEASE-00118056-LEGAEASE-00118057	Condensed, SA, Sub	0.33	0	1	1	1	1
436	Calvert Fire Ins. Co. v. James, 236 S.C. 431	366+1	Legal subrogation is not dependent upon contract; the doctrine is an equitable one, founded not upon any fixed law, but upon principles of natural justice; its purpose is to require the ultimate discharge of a debt by the person who in equity and good conscience ought to pay it; and it is to be applied according to the dictates of equity and good conscience in the light of the actions and relationship of the parties.	Legal "subrogation" is not dependent upon contract; the doctrine is an equitable one, founded not upon any fixed law, but upon principles of natural justice; its purpose is to require the ultimate discharge of a debt by the person who in equity and good conscience ought to pay it; and it is to be applied according to the dictates of equity and good conscience in the light of the actions and relationship of the parties.	Is the doctrine of equitable subrogation founded upon principles of natural justice?	K035333.docx	LEGALEASE-00120334-LEGALEASE-00120335	Condensed, SA	0.51	0	1	0	1	
437	NAT' GW Worlg. Co. v. Ros, 34 Km. App. 2d 382	366+2311	Explaining that the doctrine of subrogation "is based on the theory of unjust enrichment, the Oregon court stated: "[T]he right of subrogation or of equitable assignment is not founded upon contract alone, nor upon the absence of contract, but is founded upon the facts and circumstances of the particular case and upon principles of natural justice; and generally, where it is equitable that a person furnishing money to pay a debt should be substituted for the creditor or such person will be so substituted."	The right of subrogation or of equitable assignment is not founded upon contract alone, nor upon the absence of contract, but is founded upon the facts and circumstances of the particular case and upon principles of natural justice; and generally, where it is equitable that a person furnish money to pay a debt should be substituted for the creditor or such person will be so substituted.	"In the right of subrogation or of equitable assignment founded upon principles of natural justice?"	Subrogation - Memo v 571 - C - NE.docx	ROSS-003324322-ROSS-003324323	Condensed, SA	0.22	0	1	0	1	

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Differences
438	In re Univ. Ctr. Hotel, 323 B.R. 306	36:6+311	Next, P.C.D. asserts two other theories under which they argue they may recover attorney's fees and costs from Registry. The first, a theory of equitable subrogation, is wholly unsupported by any authority. P.C.D. claims that Registry should "stand in the shoes" of the Debtor and therefore be liable for the Debtors' debts (which they argue would include attorney's fees and costs in this case under the Contract). Under the Contract, the entire debt of the party who is not primarily liable is in order to protect its own interests, as long as subrogation would not harm the rights of a third party. Now Information Systems v. Greenwich Inc. Co., 365 F.3d 996, 1005 (11th Cir.2004) (citing Dade County SA, Bd. v. Radio Station WQBA, 731 So.2d 638, 646 (Fla.1999)). The party that paid the other's debt is then able to stand in the shoes of the party whose debt it paid and receive that party's rights. Id.	In Florida, equitable subrogation is appropriate when one party non-voluntarily pays the entire debt of another on which the paying party is not primarily liable in order to protect its own interests, as long as subrogation would not harm the rights of a third party, the party that paid the other's debt is then able to stand in the shoes of the party whose debt it paid and receive that party's rights.	"Is equitable subrogation appropriate where one party non-voluntarily pays the entire debt of another on which the paying party is not primarily liable in order to protect its own interests, as long as subrogation would not harm the rights of a third party?"	Subrogation - Memo # 683 - C - SU.docx	ROSS-00329744-ROSS-003329746	SA, Sub	0.59	839	15,344	14,873	21,876	9,029
	Johnson v. W. Suburban Bank, 225 F.3d 366	25:1+21	Though the statute clearly contemplates class actions, there are no provisions within the law that create a right to bring them, or evince an intent by Congress that claims initiated as class actions be exempt from binding arbitration clauses; rather, the "right" to proceed to a class action, insofar as TLA is concerned, is a procedural one that arises from the Federal Rules of Civil Procedure. See Fed.R.Civ.P. 23.	Can Truth in Lending Act (TILA) claims initiated as class actions be exempt from binding arbitration?	Q7097.docx	LEGALCASE-0012442-LEGALCASE-00122443		SA, Sub	0.21	0	0	1	1	1
439	Haek v. PERITO, 258 Ga. App. 170	30:7+43	Where the exclusion of evidence is regarded as a matter of law, the trial court need not abuse its discretion in granting a motion in limine. Id. at 197, 518 S.E.2d 194; American Petroleum Products v. Mom & Pop Stores, 231 Ga.App. 1, 703, 497 S.E.2d 616 (1998). Thus, "[b]y its very nature, the grant of a motion in limine excluding evidence suggests that there is no circumstance under which the evidence under scrutiny is likely to be admissible at trial. In light of that absolute, the grant of a motion in limine excluding evidence is judicial power which must be exercised with great care. Anderson v. Williams, 450 Ga. 535, 546, 448 S.E.2d 817, 820 (1993). A motion in limine may be used in two ways: 1) The movant seeks, and a final ruling on the admissibility of evidence, but only to prevent the mention by anyone, during trial, of a certain item of evidence or area of inquiry until its admissibility can be determined during the course of the trial outside the presence of the jury. 2) The movant seeks a ruling on the admissibility of evidence prior to trial. The trial court has an absolute right to refuse to decide the admissibility of evidence, allegedly violative of some ordinary rule of evidence, prior to trial. However, the trial court does not have the authority to refuse to decide the admissibility of evidence prior to trial, the court's denial of [the] admissibility is similar "to a preliminary ruling on evidence at a pretrial conference" and it "controls the subsequent course of action, unless modified at trial to prevent manifest injustice." Harley Davidson Motor Co. v. Duvel, 244 Ga. 384, 285-6, 260 S.E.2d 20 (1979). (Citations, punctuation and footnote omitted; emphasis in original.) State v. Johnston, 249 Ga. 413, 415(3), 291 S.E.2d 543 (1982); see also Andrews v. Wilbanks, supra at 536, 438 S.E.2d 817.	"Can a motion in limine be used when the movant seeks, and a final ruling on the admissibility of evidence, but only to prevent the mention by anyone, during trial, of a certain item of evidence or area of inquiry?"	Pretrial Procedure - Memo # 153 - C - CRB.docx	ROSS-003298780-ROSS-003298781	Condensed, SA	0.83	0	1	0	1	1	1
	Heflin v. Merril, 154 So. 3d 887	30:7+43	This Court "will reverse [the circuit] courts' denial or grant of a motion in limine only if the court abused its discretion in denying or granting the motion." Wright v. Royal Carpet Serv., 29 So.3d 109, 115 (13 Miss.Ct.App.2010). When granting a motion in limine, the circuit court must first find the following two factors present: "(1) the material or matter offered, reference, or statements made during trial concerning the evidence; and (2) the movant's offer, reference, or statements made during trial concerning the material will tend to prejudice the jury." Id. (quoting Whitley v. City of Meridian, 530 So.2d 1341, 1344 (Miss.1988)).	Should a motion in limine be granted only when material or evidence will be inadmissible and statements made during trial concerning material will tend to prejudice a jury?	Pretrial Procedure - Memo # 162 - C - CRB.docx	ROSS-00324577-ROSS-00324578	SA, Sub	0.34	0	0	1	1	1	1
441	In re Fleming, 55, 378 B.R. 893	36:6+1	Under California's decisional law of equitable subrogation, one who claims to be equitably subrogated to the rights of a secured creditor must satisfy certain prerequisites: (1) payment must have been made by the claimant; (2) the claimant must have acted in good faith; and (3) the debt must be for which he or she has not primarily liable. (4) The entire debt must have been paid, and (5) subrogation must not work any injustice to the rights of others.	Under California's decisional law of equitable subrogation, one who claims to be equitably subrogated to the rights of a secured creditor must satisfy certain prerequisites: (1) payment must have been made by the claimant; (2) the claimant must have acted in good faith; and (3) the debt must be for which he or she has not primarily liable. (4) The entire debt must have been paid, and (5) subrogation must not work any injustice to the rights of others.	What certain prerequisites must be satisfied by one who claims to be equitably subrogated to the rights of a secured creditor?	Subrogation - Memo # 534 - C - NO.docx	ROSS-003285277-ROSS-003285278	Condensed, SA	0.03	0	1	0	1	1
	In re Bounds, 495 B.R. 725	13+61	Where the act setting the injury in motion is in itself a completed wrong, such as an invasion of some personal or property right of the plaintiff, the act and legal injury occur simultaneously. Atkins, 417 S.W.2d at 353 (citation omitted). In that case, the cause of action accrues "from the time [the plaintiff] is injured by the defendant's act, and not immediately on commission of the act." Id. (citation omitted). On the other hand, "[i]f the act of itself not unlawful in this sense," the cause of action accrues "when, and only when, the damages are sustained." Id. (citation omitted). This is true even if "at the time the act is done it is apparent that injury will inevitably result." Id. (citation omitted).	"Does a cause of action accrue from the time that the act is committed, even though title, if any, actual damage occurs immediately upon commission of the tort?"	Action - Memo # 35 - C - UK.docx	ROSS-003281837-ROSS-003281833	Condensed, SA, Sub	0.53	0	1	1	1	1	1
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ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences	
444	Heimerich & Payne Int'l Drilling Co. v. Baharian Republic of Venezuela, 971 F. Supp. 2d 419	22:1-42	The act of state doctrine "precludes the courts of this country from inquiring into the validity of the public acts of a recognized foreign sovereign power committed within its own territory." <i>Banco Nacional de Cuba v. Sabatino</i> , 376 U.S. 398, 401, 84 S.Ct. 923, 11 L.Ed.2d 804 (1964). This doctrine "is applicable when 'the relief sought or the defense interposed would require a court in the United States to declare invalid the official act of a foreign sovereign performed within' its boundaries." <i>World Wide Minerals, Ltd. v. Republic of Kazakhstan</i> , 296 F.3d 1154, 1164 (D.C.Cir.2002) (internal brackets omitted) (quoting <i>W.S. Kirkpatrick & Co. v. Environmental Defense Fund</i> , 493 U.S. 400, 405, 110 S.Ct. 701, 107 L.Ed.2d 816 (1990)). The doctrine is to be interpreted and applied in accordance with the policy interests of "international comity, respect for the independence and sovereignty of foreign nations, and the avoidance of embarrassment to the Executive Branch in its conduct of foreign relations." <i>W.S. Kirkpatrick</i> , 493 U.S. at 408, 110 S.Ct. 701; <i>Nemeriam v. Fed. Democratic Republic of Ethiopia</i> , 491 F.3d 470, 477 n. 7 (D.C.Cir.2007). However, the party raising the defense bears the burden to affirmatively show that an act of state has occurred and "that no bar to the doctrine is applicable under the factual circumstances." <i>Hantree de Argenave v. Weinberger</i> , 745 F.2d 524, 531 (10 Cir.1984) (en banc); <i>Id.</i> , 745 F.2d 531, 532 (10 Cir.1984) (en banc); <i>Id.</i> , 745 F.2d 532, 533, 105 S.Ct. 2153, 86 L.Ed.2d 255 (1985).	The act of state doctrine is applicable when the relief sought or the defense interposed would require a court in the United States to declare invalid the official act of a foreign sovereign performed within its boundaries.	Is the act of state doctrine applicable when the relief sought or the defense interposed would require a court in the United States to declare invalid the official act of a foreign sovereign performed within its boundaries?	International Law - Memo #85 - C - 11.docx	ROSS-00326735-ROSS-00326737	Condensed, SA	0.85	839	1	15,344	0	21,876	9,029
	United States v. Sumof 570,950,605, 34 F. Supp. 3d 212	22:1-42	Under the act of state doctrine, federal and state courts in the United States must "presume the validity of an official act of a foreign sovereign government." <i>Restatement (Second) of Foreign Relations Law</i> § 411, cmt. a. <i>U.S. 677, 713 S.Ct. 2240, 189 L.Ed.2d 12 (2004)</i> (quoting <i>W.S. Kirkpatrick & Co., Inc. v. Env't. Tectonics Corp.</i> , 493 U.S. 400, 405, 110 S.Ct. 701, 107 L.Ed.2d 816 (1990)). The doctrine applies when "the relief sought or the defense interposed would [require] a court in the United States to declare invalid the official act of a foreign sovereign performed within its own territory." <i>Kirkpatrick</i> , 493 U.S. at 405, 110 S.Ct. 701. Neither a statute nor the "text of the Constitution [requires] the act of a foreign sovereign to be declared invalid." <i>Kirkpatrick</i> , 493 U.S. at 405, 110 S.Ct. 701, 107 L.Ed.2d 816 (1990). Rather, "the continuing viability depends on its capacity to reflect the proper distribution of the functions bearing upon foreign affairs." <i>Id.</i> at 427-28, 84 S.Ct. 923. "As such, it operates as a rule of judicial restraint in decisionmaking, not [as] a jurisdictional limitation like the political question doctrine." <i>Housini v. Mitchev</i> , 796 F.3d 1, 12 (D.C. Cir. 2015), or as "some vague doctrine of abstention." <i>Kirkpatrick</i> , 493 U.S. at 406, 110 S.Ct. 701.	The act of state doctrine, under which federal and state courts in the United States must presume the validity of an official act of a foreign sovereign government performed within its own territory, applies when the relief sought or the defense interposed would require a court in the United States to declare invalid the official act of a foreign sovereign performed within its own territory.	Does the act of state doctrine apply when the relief sought or the defense interposed would require a court in the United States to declare invalid the official act of a foreign sovereign performed within its own territory?	International Law - Memo # 10 - C - 11.docx	ROSS-003289079-ROSS-00328981	Condensed, SA	0.72	0	1	0	1		
445	Cassirer v. Kingdom of Spain, 580 F.3d 1048	22:1-111	The doctrine of exhaustion of domestic remedies is a well-established rule of customary international law. "See <i>Sarei</i> , 550 F.3d at 829 (quoting <i>Interhandel Case [Switz. v. U.S.]</i> , 1959 (C.I.J. 6, 26 [Mar. 29]). This rule generally provides that a state is not required to consider a claim, made by a person against a foreign state, and alleging a violation of international law, until that person has exhausted domestic remedies, unless such remedies are clearly shown to be inadequate, or their application is unreasonably prolonged." See <i>Sarei</i> , 550 F.3d at 829 (citing <i>Restatement (Third) of Foreign Relations Law</i> "713 cmt. 1 & "703 cmt. d)). Because United States courts import well-settled principles of international law to define substantive rights in cases brought under the FISA, there are logical arguments suggesting that courts should also import the well-settled limitations to such causes of action, including the doctrine of exhaustion of remedies." Cf. <i>Sarei</i> , 550 F.3d at 835 (Belt, J., dissenting) ("The exhaustion of remedies doctrine is not a jurisdictional bar." F.3d at 1231-145 (Bybee, J., dissenting) (same). Nonetheless, where Congress has not clearly required exhaustion, we have not (and likely cannot) impose exhaustion as an absolute jurisdictional requirement. See <i>Sarei</i> , 550 F.3d at 824 ("[W]e decline to impose an absolute requirement of exhaustion in ATS cases."). See also <i>Simpson v. Federal Republic of Germany</i> , 250 F.3d 1145, 1153-54 (7th Cir.2003) ("[A]lthough international law is 'part of our law,' it does not follow that federal courts must be read to reflect the norms of international law.") (citation omitted).	The doctrine of exhaustion of domestic remedies is a well-established rule of customary international law, under which a state is not required to consider a claim made by a person against a foreign state, and alleging a violation of international law, until that person has exhausted domestic remedies, unless such remedies are clearly shown to be inadequate, or their application is unreasonably prolonged.	"Under the doctrine of exhaustion of domestic remedies, is a state required to consider a claim made by a person against a foreign state that alleges a violation of international law?"	International law - Memo # 173 - C - PH5.docx	ROSS-003282904-ROSS-003282905	Condensed, SA	0.76	0	1	0	1		
	First Nat. City Bank v. Banco Nacional de Cuba, 486 U.S. 759	22:1-42	The act of state doctrine represents an exception to the general rule that a court of the United States, where appropriate jurisdictional standards are met, will decide cases before it by choosing the rules appropriate for resolution among the various countries involved, including international law. (See, e.g., <i>DeMeo</i> , 2016 WL 10000000, at *10 (D.C. Cir. 2016).) The doctrine precludes any review whatever of the acts of the government of one sovereign State done within its own territory by the courts of another sovereign State. It is clear, however, from both history and the opinions of this Court that the doctrine is not an inflexible one. Specifically, the Court in <i>Sabatino</i> described the act of state doctrine as "a principle of decision binding on federal and state courts alike but compelled by neither international law nor the Constitution." 376 U.S., at 427; 44 S.Ct., at 540; 10 L.Ed.2d 475, 485 (1964). The doctrine is not intended to reflect the proper distribution of functions between the judicial and political branches of the Government on matters bearing upon foreign affairs." <i>Id.</i> , at 427-428, 84 S.Ct., at 940.	The act of state doctrine represents an exception to the general rule that a court of the United States, where appropriate jurisdictional standards are met, will decide cases before it by choosing the rules appropriate for resolution among the various sources of law, including international law. (Per Mr. Justice Rehnquist with The Chief Justice and another Justice concurring and two Justices concurring in result.)	"Where the act of state doctrine is inapplicable, will a court of United States will decide cases for it by choosing the rules appropriate for decision from among various sources of law including international law?"	020465.docx	LEGAEASE-00124140-LEGAEASE-00124141	SA, Sub	0.64	0	0	1	1		
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ROW	Judicial Opinion	WIXS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
448	Q.M.E. Shipping Ltd. v. Flota Mercante Grancolombiana, S.A., 830 F.2d 449	22:13-42	In essence, the act of state doctrine is a principle of law designed primarily to avoid judicial inquiry into the acts and conduct of the officials of the foreign state, its affairs and its policies, and the underlying reasons and motivations for the actions of the foreign government. Such an inquiry is foreclosed under the act of state doctrine, <i>Iran v. Mobil Oil</i> , 698 F.2d 144, 147 (1982), and this is true regardless of whether the foreign government is named as a party to the suit or whether the validity of its actions are directly challenged in the pleadings. <i>International Ass'n of Machinists v. OPEC</i> , 649 F.2d 1354, 1359 (9th Cir. 1981), cert. denied, 454 U.S. 1163, 52 S.Ct. 1036, 71 L.Ed.2d 313 (1982).	Act of state doctrine "is a principle of law designed primarily to avoid judicial inquiry into the acts and conduct of the officials of the foreign state, its affairs, and its policies, and into the underlying reasons and motivations for actions of foreign government."	"Is the "act of state doctrine" a principle of law designed primarily to avoid judicial inquiry into the acts and conduct of the officials of a foreign state, its affairs and its policies, and the underlying reasons and motivations for the actions of the foreign government?"	International Law - Memo #525 - C-DA.docx	ROSS-00323687-ROSS-003236872	Condensed, SA	0.65	839	15,344	14,873	21,876	9,029
449	Huber v. Rohrig, 280 Neb. 868	30:7A-3	In <i>Olson</i> , we flawed the initial majority's asking to be excluded to a motion in limine and explained that the motion in limine is but a procedural step to prevent prejudicial evidence from reaching the jury. We explained that it is not the purpose of a motion in limine to obtain a final ruling upon the ultimate admissibility of the evidence. See <i>Id.</i> , citing <i>State v. Timmons</i> , 263 Neb. 622, 641 NW.2d 383 (2002). Rather, its purpose is to prevent the proponent of potentially prejudicial matter from displaying it to the jury, making statements about it before the jury, or asking the jury to consider it. <i>Id.</i> We explained that the court has ruled upon inadmissibility in the context of the trial itself. See <i>Olson</i> , <i>supra</i> . We concluded in <i>Olson</i> that these motion in limine principles applied to a pretrial motion attempting to exclude evidence as a discovery sanction, and we find that these same principles apply to the instant case.	Purpose of a motion in limine is to prevent the proponent of potentially prejudicial matter from displaying it to the jury, making statements about it before the jury, or presenting the matter to the jury in any manner until the trial court has ruled upon its admissibility in the context of the trial itself.	"Is the purpose of a motion in limine to prevent the proponent of potentially prejudicial matter from displaying it to the jury, making statements about it before the jury, or presenting the matter to the jury in any manner until the trial court has ruled upon its admissibility in the context of the trial itself?"	Partial Procedure - Memo #113 - C-ANC.docx	ROSS-00323687-ROSS-003236875	Order, SA	0.67	1	0	0	1	
450	Lopez v. State, 50 So. 3d 341	11:04-32(H)	This standard of review for the admission or exclusion of evidence is an abuse of discretion. <i>Exxon v. McRae</i> , 525 So.2d 882, 890 (2010) (citing <i>Miles</i> , 363 So.2d 331, 341). (Miss.2003). A trial court does not abuse its discretion in granting a motion in limine where the court determines that: "(1) the material or evidence in question will be inadmissible at a trial under the rules of evidence; and (2) the mere offer, reference, or statements made during trial concerning the material will tend to prejudice the jury." <i>Id.</i> (quoting <i>Whitney v. City of Meridian</i> , 530 So.2d 1341, 1344 (Miss.1988)).	A trial court does not abuse its discretion in granting a motion in limine where the court determines that: "(1) the material or evidence in question will be inadmissible at a trial under the rules of evidence; and (2) the mere offer, reference, or statements made during trial concerning the material will tend to prejudice the jury."	"Should a motion in limine be granted only if the material or evidence in question will be inadmissible at a trial under the rules of evidence, and (2) the mere offer, reference, or statements made during trial concerning the material will tend to prejudice the jury?"	Prelim Procedure - Memo #130 - C-CB.docx	ROSS-00323687-ROSS-003236866	Condensed, SA	0.48	0	1	0	1	
451	Dyer v. Carbin, 333 S.W.3d 703	30:7A-3	The purpose of a motion in limine is to prevent the opposing party from asking questions to elicit or otherwise introducing unfairly prejudicial evidence without first approaching the bench for a formal ruling. <i>Fort Worth Hotel Ltd. P'ship v. Enerch Corp.</i> , 977 S.W.2d 746, 757 (Tex.App.-Fort Worth 1998, no pet.) (citing <i>Harford Acid. & Indem. Co. v. McCasland</i> , 369 S.W.2d 331, 335 (Tex.1963)). When the trial court grants a motion in limine, the opposing party has a duty to comply with the court's ruling. <i>Id.</i> See also <i>State v. Williams</i> , 34 S.W.3d 799, 805 (Tex.App.-Tarrant 2001, pet. denied). When a trial court instructs the jury to disregard violative evidence, we review that evidence to determine whether an instruction to disregard can cure its admission. <i>Enerch Corp.</i> , 977 S.W.2d at 757 (citing <i>Dove v. Dir., State Employees Workers' Comp.</i> , 857 S.W.2d 577, 580 (Tex.App.-Houston [1st Dist.] 1993, writ denied)).	The purpose of a motion in limine is to prevent the opposing party from asking questions to elicit or otherwise introducing unfairly prejudicial evidence without first approaching the bench for a formal ruling.	Is the purpose of a motion in limine to prevent the opposing party from asking questions to elicit or otherwise introducing unfairly prejudicial evidence without first approaching the bench for a formal ruling?	Q32431.docx	LEGALASE-00122744-LEGALASE-00122745	Condensed, SA	0.78	0	1	0	1	
452	Vaughan v. Greater Huntington Park & Recreation Dist., 223 W. Va. 583	30:7A-3	The order granting the motion in limine is simply an evidentiary pre-trial ruling regarding admissibility of testimony related to the issue of damages. "A motion in limine is a procedure which enables the trial court to become acquainted with a potentially troublesome evidentiary issue in advance of the offer of the evidence...in order to prevent the jury from being exposed to inadmissible evidence." <i>Daniel v. Stevens</i> , 183 W.Va. 95, 103 U.S. 394, 52 F.2d 79, 87 (1930) AS such, the resulting order is not a ruling on the merits of the case. The court's ruling is merely advisory and it does not conclude proceedings on a claim raised in the suit, nor does it release a party from all or part of this suit.	A motion in limine is a procedure which enables the trial court to become acquainted with a potentially troublesome evidentiary issue in advance of the offer of the evidence in order to prevent the jury from being exposed to inadmissible evidence.	Is a motion in limine a procedure which enables the trial court to become acquainted with a potentially troublesome evidentiary issue in advance of the offer of the evidence in order to prevent the jury from being exposed to inadmissible evidence?	Q41536.docx	LEGALASE-00123907-LEGALASE-00123908	Condensed, SA	0.65	0	1	0	1	
453	Kaplan v. Cent. Bank of Islamic Republic of Iran, 961 F. Supp. 2d 185	22:13-42	"The act of state doctrine 'precludes the courts of this country from inquiring into the validity of the public acts a recognized foreign sovereign power committed within its own territory.'" <i>Admission Comp. v. Islamic Republic of Iran</i> , 1985 WL 1335, at *1 (S.D.N.Y. 1985) (quoting <i>United States v. ISL</i> , 611 F.2d 1352, 1359, 1361 L.Ed.2d 577 (U.S. 2013) (quoting <i>Barco Nacional de Cuba v. Sabatino</i> , 376 U.S. 388, 401, 84 S.Ct. 923, 11 L.Ed.2d 804 (1964)). The doctrine applies when "the relief sought or the defense interposed would [require] a court in the United States to declare invalid the official act of a foreign sovereign performed within its own territory." <i>W.S. Kirpatrick & Co., Inc. v. Environmental Tectonics Corp.</i> , 493 U.S. 400, 405, 110 S.Ct. 701, 107 L.Ed.2d 886 (1990). "Act of state issues only arise when a court is asked to pass upon the validity of the official acts of a foreign sovereign. When the outcome of the court's decision will depend on the effect of official acts of a foreign sovereign, the court's decision is an act of state." <i>Id.</i> at 406, 110 S.Ct. 701. "When it applies, the doctrine serves as a 'rule of decision for the courts of this country,' which requires courts to deem valid the acts of foreign sovereigns taken within their own jurisdictions." <i>McKesson Corp.</i> , 672 F.3d at 1066 (quoting <i>Irizarpatric</i> , 493 U.S. at 406, 110 S.Ct. 701).	Act of state issues only arise when a court must decide, that is, when the outcome of the case turns upon, the effect of official action by a foreign sovereign; when it applies, the doctrine serves as a rule of decision for the courts of the United States, which requires courts to deem valid the acts of foreign sovereigns taken within their own jurisdictions.	Does an act of state issues only arise when a court must decide the outcome of the case turns upon the effect of official action by a foreign sovereign?	Q2088.docx	LEGALASE-00124584-LEGALASE-00124586	Condensed, SA	0.71	0	1	0	1	

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Between Opinion and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
454	Hiedel v. Bi nom. S.A., 732 F.2d 587	221+42	Bancam argues that the "act of state doctrine" precluded the District Court from granting the plaintiff's claims. The act of state doctrine is a principle of law designed primarily to avoid judicial inquiry into the acts and conduct of the officials of a foreign state, its affairs, and its policies, and into the underlying reasons and motivations for actions of foreign government. Such an inquiry is foreclosed under the act of state doctrine. <i>Hunt v. Mobil Oil Corp.</i> , 550 F.2d 88, 73 (2d Cir. 1977), cert. denied, 434 U.S. 984, 98 S.Ct. 608, 54 L.Ed.2d 477 (1977); and this is true regardless of whether the foreign government is named as a party to the suit or whether the validity of the act is at issue. <i>United States v. Alvarez-Cruz</i> , 689 F.2d 1033, 1038 (1st Cir. 1982), cert. denied, 458 U.S. 1163, 102 S.Ct. 1036, 71 L.Ed.2d 319 (1982).	Under "act of state doctrine," courts exercise jurisdiction but prudentially decline to decide cases in which the government of a sovereign state performed within its own territory.	"Under the act of state doctrine, do courts exercise jurisdiction but prudentially decline to decide cases in which the government of a sovereign state performed within its own territory?"	International Law - Memo # 436 - C - MS.docx	R055-00334042-R055-00334043	Condensed SA	0.8	839	15,344	14,873	21,876	9,079
455	O.L.E. Shipping Ltd. v. Fina Meranle Gracelombani, S.A., 830 F.2d 449	221+42	In essence, the act of state doctrine is a principle of law designed primarily to avoid judicial inquiry into the acts and conduct of the officials of the foreign state, its affairs and its policies and the underlying reasons and motivations for the actions of the foreign government. Such an inquiry is foreclosed under the act of state doctrine. <i>Hunt v. Mobil Oil Corp.</i> , 550 F.2d 88, 73 (2d Cir. 1977), cert. denied, 434 U.S. 984, 98 S.Ct. 608, 54 L.Ed.2d 477 (1977); and this is true regardless of whether the foreign government is named as a party to the suit or whether the validity of the act is at issue. <i>United States v. Alvarez-Cruz</i> , 689 F.2d 1033, 1038 (1st Cir. 1982), cert. denied, 458 U.S. 1163, 102 S.Ct. 1036, 71 L.Ed.2d 319 (1982).	"Act of state doctrine" is a principle of law designed primarily to avoid judicial inquiry into the acts and conduct of the officials of the foreign state, its affairs, and its policies, and into the underlying reasons and motivations for actions of foreign government."	"Act of state doctrine" is a principle of law designed primarily to avoid judicial inquiry into the acts and conduct of the officials of the foreign state, its affairs, and its policies, and into the underlying reasons and motivations for actions of foreign government?"	International Law - Memo # 516 - C - ES.docx	R055-00334852-R055-00334853	Condensed SA	0.65	0	1	0	1	1
456	In re Grand Jury Proceedings Bank of Nova Scotia, 740 F.2d 817	221+42	Only the United Kingdom asserts that the act of state doctrine should be applied here to thwart the efforts by the Executive Branch to obtain records in furtherance of a grand jury investigation into conduct crossing our nation's boundaries. The doctrine is completely inapplicable to this case. The act of state doctrine is a principle of law designed primarily to avoid judicial inquiry into the acts and conduct of the officials of the foreign state, its affairs and its policies and the underlying reasons and motivations for the actions of the foreign government. Such an inquiry is foreclosed under the act of state doctrine. <i>Hunt v. Mobil Oil Corp.</i> , 550 F.2d 88, 73 (2d Cir. 1977), cert. denied, 434 U.S. 984, 98 S.Ct. 608, 54 L.Ed.2d 477 (1977); and this is true regardless of whether the foreign government is named as a party to the suit or whether the validity of the act is at issue. <i>United States v. Alvarez-Cruz</i> , 689 F.2d 1033, 1038 (1st Cir. 1982), cert. denied, 458 U.S. 1163, 102 S.Ct. 1036, 71 L.Ed.2d 319 (1982).	Art of state doctrine is not required by considerations of sovereignty, international law or the Constitution, but instead derives from judiciary's concern for its possible interference with conduct of foreign affairs by political branches of government.	"Is the act of state doctrine not required by considerations of sovereignty, international law or the Constitution, but instead derives from judiciary's concern for its possible interference with conduct of foreign affairs by political branches of government?"	International Law - Memo # 565 - C - SA.docx	R055-0032481912-R055-0032481913	Condensed SA	0.78	0	1	1	1	1
457	Bodner v. Paribas, 202 F.R.D. 370	1704+1261	The French laws cited by defendants do not change this analysis, or present a compelling, competing French national interest. As held by the Second Circuit, the act of state doctrine is a principle of law designed primarily to avoid judicial inquiry into the acts and conduct of the officials of the foreign state, its affairs and its policies and the underlying reasons and motivations for the actions of the foreign government. Such an inquiry is foreclosed under the act of state doctrine. <i>Hunt v. Mobil Oil Corp.</i> , 550 F.2d 88, 73 (2d Cir. 1977), cert. denied, 434 U.S. 984, 98 S.Ct. 608, 54 L.Ed.2d 477 (1977); and this is true regardless of whether the foreign government is named as a party to the suit or whether the validity of the act is at issue. <i>United States v. Alvarez-Cruz</i> , 689 F.2d 1033, 1038 (1st Cir. 1982), cert. denied, 458 U.S. 1163, 102 S.Ct. 1036, 71 L.Ed.2d 319 (1982).	The French blocking statute does not subject defendants to a realistic risk of prosecution, and cannot be construed as a law intended to universally govern the conduct of litigation within the jurisdiction of a United States court.	"Does the French blocking statute subject defendants to a realistic risk of prosecution, and cannot be construed as a law intended to universally govern the conduct of litigation within the jurisdiction of a United States court?"	International Law - Memo # 793 - C - NO.docx	R055-003248678-R055-003248679	Condensed SA	0.86	0	1	0	1	1
458	West v. Multihawk Corp. nms, S.A., 807 F.2d 820	221+42	The act of state doctrine is a combination principle and a substantive rule fashioned by the Supreme Court and reaffirmed in <i>Banco Nacional de Cuba v. Sabbatino</i> , 376 U.S. 398, 84 S.Ct. 923, 11 L.Ed.2d 804 (1964). It prohibits U.S. courts from reaching the merits of an issue even though we otherwise have jurisdiction "in order to avoid embarrassment of foreign governments in politically sensitive matters and interference with the conduct of our own foreign policy. See e.g., <i>International Association of Machinists & Aerospace Workers, (IAM) v. Organization of Petroleum Exporting Countries (OPEC)</i> , 649 F.2d 1341, 1347 (9th Cir. 1981), cert. denied, 458 U.S. 1163, 102 S.Ct. 1036, 71 L.Ed.2d 319 (1982). The act of state doctrine is found in <i>Underhill v. Hernandez</i> , 168 U.S. 250, 18 S.Ct. 83, 84 L.Ed. 456 (1897).	"Act of state doctrine" prohibits United States courts from reaching the merits of an issue even though we otherwise have jurisdiction in order to avoid embarrassment of foreign governments in politically sensitive matters and interference with the conduct of our own foreign policy.	Does the act of state doctrine prohibit United States courts from reaching the merits of an issue in order to avoid embarrassment of foreign governments in politically sensitive matters and interference with the conduct of our own foreign policy?	020865.docx	LEGALCASE-00124245-LEGALCASE-00124246	Condensed SA	0.66	0	1	0	1	1

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences			
459	United States v. DeGado-Garcia, 374 F.3d 1337	22-1-392	The presumption embodies a sensible caution against reading statutes lightly to apply outside U.S. borders. Like any linguistic convention, it depends on contingent real-world assumptions. The point of the policy concerns "balancing" the presumption against applying statutes to have extraterritorial effect is that they mean that a court should ordinarily understand Congress's commands to apply only within U.S. borders, not that a court should itself apply those policy concerns to the case at bar and read the statute based on the result of its own policy analysis. Because, as the dissent correctly states, "[d]ecisions about when to subject foreign nationals and foreign conduct to the United States' laws are not made by the courts, but by Congress and the Executive Branch because" courts "lack the foreign policy expertise of the legislative and executive branches," dissent at 1352, we must apply the canons of construction to interpret, not rewrite, congressional acts. However, in examining the statute for congressional intent of extraterritorial application, we consider both contextual and textual evidence. That is what our analysis below represents.	Because decisions about when to subject foreign nationals and foreign conduct to the United States' laws involve discrete questions and the foreign policy expertise of the legislative and executive branches, the Court of Appeals, in deciding whether a statute applies extraterritorially, must apply the canons of construction to interpret, not rewrite, congressional laws.	"In deciding whether a statute applies extraterritorially, must the courts apply the canons of construction to interpret congressional acts?"	020646.docx	LEGALGAE-00126114-LEGALGAE-00126115	SA, Sub	0.63	839	15,344	14,873	21,876	9,029			
460	Fort Worth Hotel Ltd. P'ship v. Enserch Corp., 977 S.W.2d 746	30-7A-3	We begin by addressing Lone Star Gas's disregard for the motion in limine. A motion in limine is a procedural device that permits a party to identify, before trial, certain evidentiary rulings that the court may be asked to make. See Hartford Accident & Indem. Co. v. McCordell, 369 S.W.2d 331, 335 (Tex.1963). The purpose of a motion in limine is to prevent the other party from asking prejudicial questions and introducing prejudicial evidence in front of the jury without first asking the court's permission. In this case, Lone Star Gas asked the court to allow evidence that prohibited a party from asking a certain question or offering certain evidence in front of the jury without first approaching the bench for a ruling. See Chavis v. Director, 934 S.W.2d 439, 446 (Tex.App. Beaumont 1996, no writ). When a trial court's order on a motion in limine is violated, we review the violation to see if it is curable by instructions to the jury to disregard it. See Dove v. Director, State Employees Workers' Compensation Div., 857 S.W.2d 377, 380 (Tex.App. Houston [1st Dist.] 1993, writ denied).	Motion in limine is a procedural device that permits a party to identify, before trial, certain evidentiary rulings that the court may be asked to make; its purpose is to prevent the other party from asking prejudicial questions and introducing prejudicial evidence in front of the jury without first asking the court's permission.	"Is a motion in limine a procedural device that permits a party to identify, before trial, certain evidentiary rulings that the court may be asked to make; its purpose is to prevent the other party from asking prejudicial questions and introducing prejudicial evidence in front of the jury without first asking the court's permission?"	037625.docx	LEGALGAE-00125913-LEGALGAE-00125914	Condensed, SA	0.72	0	1	0	1	1			
461	Duquenne Light Co. v. Pennsylvania Pub. Util. Comm'n, 164 Pa. Super. 166	31-7A-114	A utility company in the exercise of its managerial functions may, in the first instance, determine the type and extent of its service to the public, within the limits of adequacy and reasonableness. Such service however must conform with the regulations and subsequent orders of the Public Utility Commission. A utility company is bound to adhere to the orders of the Public Utility Commission. See Public Utility Comm'n v. Erie R.R., 340 Pa. 1, 10, 19 P.2d 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.	Can a public utility determine the extent of service to the public within the limits of reasonableness in the exercise of its managerial functions?	Public Utilities - Memo 179 - AM.docx	R055-00286724-R055-003286735	SA, Sub	0.83	0	0	1	1	1	1	1	1	1
462	Batte Min. P.L.C. v. Smith, 879 F.3d 1133	22-1-395	Defendants' use of the United States' communications systems, in this case, was merely to activities properly viewed as preparatory to an alleged securities fraud perpetrated in England. It is the option of this court that Congress did not intend the limited judicial resources of the United States to be expended on the resolution of disputes over domestic communications systems. It is so held. If the court were held otherwise, jurisdiction could be sustained over a foreign plaintiff's RICO claim solely because the RICO defendants made two telephone calls within the United States, or used the United States mails on two occasions. Given the vast number of foreign business transactions in which the United States mail, wire and telephone systems are used merely by chance, United States courts could become flooded with numerous foreign-based RICO suits bearing little or no nexus to this country. The United States' courts are not to be used as a venue in which a RICO claim is bottomed, consist merely of the use of United States communications systems in furtherance of domestic activities which are preparatory to a foreign securities fraud, and the court lacks subject matter jurisdiction over the underlying securities fraud claims, the court also lacks subject matter jurisdiction over the RICO claims which are primarily predicated upon the securities fraud. Conduct more substantial than that alleged here must take place in the United States for jurisdiction to be sustained.	When predicate acts upon which racketeer influenced and corrupt Organizations Act (RICO) claim is bottomed consist merely of use of United States communications systems in furtherance of domestic activities which are preparatory to foreign securities fraud, and court lacks subject matter jurisdiction over underlying securities fraud claims, court also lacks subject matter jurisdiction over RICO claims which are primarily predicated upon securities fraud. 18 U.S.C.A. § 1961 et seq.	When does a court lack subject matter jurisdiction over RICO claims which are primarily predicated upon securities fraud?	005709.docx	LEGALGAE-00126481-LEGALGAE-00126482	SA, Sub	0.68	0	0	1	1	1	1		

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463	Strawberry Etc. Serv. Dist. v. Spanish Fork City, 918 P.2d 870	140466	However, to create a protectable property interest, a contract must establish rights more substantial than a unilateral right of continued privileges. "Absent an exclusive franchise or the equivalent thereof, no vested, legally enforceable interest arises, and consequently, there is no property that can provide the basis for compensation in an inverse condemnation proceeding." <i>Balford</i> , 504 P.2d at 109.	For purposes of constitutional takings analysis, to create protectable property interest, contract must establish rights more substantial than unilateral expectation of continued privileges; absent enforceable franchise or equivalent thereof, no vested, legally enforceable interest arises and, consequently, there is no property that can provide basis for compensation in inverse condemnation proceeding. Cont. Art. 1, § 22.	When an exclusive franchise or the equivalent is absent can there be property that can provide the basis for compensation in an inverse condemnation proceeding?	Emment Domain - Memo 252 - GP.docx	ROSS-00286037 ROSS-00286036-ROSS-00286037	SA, Sub	0.01	839	15,344	14,873	21,876	9,029
										0	0	1	1	
464	McDonnell v. United States, 136 S. Ct. 2355	63-111	It is sum, an "official act" is a decision or action on a "question, matter, cause, suit, proceeding or controversy." "The question, matter, cause, suit, proceeding or controversy" must involve a formal exercise of governmental power that is similar in nature to a lawsuit before a court, a determination before an agency, or a hearing before a committee. It must also be something specific and focused that the public official may include using the official position to exert pressure on another official to perform an "official act," or to advise another official, knowing or intending that such advice will form the basis for an "official act" by another official. Setting up a meeting, talking to another official, or organizing an event (or agreeing to do so) without more "does not fit the definition of 'official act.'"	An "official act," for purposes of the federal bribery statute, which makes it a crime for a public official to demand anything of value in return for being influenced in the performance of any official act, is a decision or action on a question, matter, cause, suit, proceeding or controversy, and the question, matter, cause, suit, proceeding or controversy must involve a formal exercise of governmental power that is similar in nature to a lawsuit before a court, a determination before an agency, or a hearing before a committee; it must also be something specific and focused that the public official may include using the official position to exert pressure on another official to perform an "official act," or to advise another official, knowing or intending that such advice will form the basis for an "official act" by another official. Setting up a meeting, talking to another official, or organizing an event (or agreeing to do so) without more "does not fit the definition of 'official act.'"	What constitutes an official act by a public official under the federal bribery statute?	012152.docx	LEGALSAFE-00131973 LEGALSAFE-00131974	SA, Sub	0.36	0	0	1	1	
										0	0	1	1	
465	Wolff v. Shaw, Lindsay & Carr Co., 36 N.Y.2d 505	43-31	Workmen's compensation, as distinguished from tort liability which is essentially based on fault, is designed to shift the risk of loss of earning capacity caused by industrial accidents from the worker to industry and ultimately the consumer. In light of its beneficial and remedial character the Workmen's Compensation Law should be construed liberally in favor of the employee. (Matter of Helz v. Rupert, 218 N.Y. 148, 112 N.E. 79.)	Workmen's compensation, as distinguished from tort liability which is essentially based on fault, is designed to shift the risk of loss of earning capacity caused by industrial accidents from the worker to industry and ultimately to consumer.	"In the workmen's compensation statute, as distinguished from tort liability which is essentially based on fault, is designed to shift the risk of loss of earning capacity caused by industrial accidents from the worker to industry and ultimately to the consumer?"	047809.docx	LEGALSAFE-00131722 LEGALSAFE-00131729	Condensed, SA	0.46	0	1	0	1	
										0	1	0	1	
466	Black v. Don Schmidt Motor, 232 Kan. 458	307A-245	This court has often held that the purpose of the per se rule is to define the full force and effect of other orders of the court and control the subsequent course of trial unless modified to prevent manifest injustice. See <i>Country Club Home, Inc. v. Harder</i> , 228 Kan. 756, 762, 620 P.2d 1140 (1980); modified 228 Kan. 802, 623 P.2d 955; <i>Dodd v. Shewen</i> , 220 Kan. 350, 353, 532 P.2d 945 (1976); <i>Kleinbrink v. Missouri-Kansas-Texas Railroad Co.</i> , 224 Kan. 437, 441-42, 581 P.2d 371 (1978). Large discretionary power is granted to the trial court in permitting or refusing modification and amendment of the issues as defined in a per se order. See <i>Black v. Don Schmidt Motor</i> , 232 Kan. 458, 460, 620 P.2d 458, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.											

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences	
	In re Lead's Estate, 201 Misc. 1302	221+162	It may not be amiss to point out that comity is a sense of mutual regard founded on identity of position and similarity of institutions. Fisher, Brown & Co. v. Fielding, 9 Conn. 91, 108, 34 A. 714, 32 L.R. 236; 139 N.E. 259, 260. As was said in King v. Sarria, 69 N.Y. 24, 31: "It is the necessary intercourse of the subjects of independent governments, which gives rise to a sort of compact, that their municipal institutions shall receive a degree of reciprocal efficacy and sanction within their respective dominions. It is not the statutes of one community which extend their controlling power into the territories of another; it is the comity of nations which gives them such extension. It is not the laws of one particular case in which it is found necessary to protect and cherish the mutual intercourse of its subjects, with those of the country whose laws he adopts; (Per Sir Saml. Romilly, <i>arguendo</i> , <i>Shedden v. Patrick</i> , 1 Macqueen's H. of L. Cases, 554.)"	Necessary intercourse between subjects of independent governments gives rise to sort of compact that their municipal institutions shall receive a degree of reciprocal efficacy and sanction within their respective dominions.	"Is the necessary intercourse of the subjects of independent governments, which gives rise to a sort of compact, that their municipal institutions shall receive a degree of reciprocal efficacy and sanction within their respective dominions?"	International Law - Memo #02055 JMC.docx	LEGALASE-00024597-2 LEGALASE-00024598	Condensed, SA	0.79	839 0	15,344 1	14,873 0	21,876 1	9,029	
469	<i>Pinto v. Penn Fogg's World</i> , 455 F.3d 455	1065+512	Second, the Penn entities add "find arbitration awards" to the language of the contract. The Penn entities argue that this language is intended to conclude that neither "the Third Circuit [nor] Pennsylvania... has expressly addressed how these two doctrines should apply to a foreign arbitration award governed by the New York Convention." Id. at 22 n. 11. Our examination of Hilton reveals that it limits its application to a judgment rendered by a "court of that country," not a private tribunal that happens to convene in another country. This limitation is made explicit by Hilton's description of the grounds on which it rests, i.e., obligations on the part of the Penn entities to arbitrate and to arbitrate on the basis of the law of the United States and of Pennsylvania, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws. Hilton, 159 U.S. at 143, 16 S.Ct. 139 (emphasis added). Hilton thus makes clear that comity is grounded in mutual respect between sovereigns for their official acts. The Penn entities have not explained why their interpretation of the contract language is more entitled to accord similar respect to the decisions of a private tribunal in another country than the decisions of a court in the United States. As a result, we are not convinced that Hilton obliges us to accord issue preclusive effect to the decisions of foreign arbitral tribunals.	"Comity," in the legal sense, is neither a matter of absolute obligation, on the one hand, nor a mere courtesy and good will, on the other. It is the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws.	"If comity is not an absolute obligation or a matter of mere courtesy and good will, what is it?"	020755.docx	LEGALASE-00135825-5 LEGALASE-00135826	Order, SA	0.71	1	0	0	1	1	
470	<i>Austin v. Austin</i> , 13 N.C. App. 266	307A+716	We do not deem it necessary to decide or discuss the other questions raised by the defendant, other than to say that it is a well-established rule that continuances are addressed to the sound discretion of trial judges and may be granted only for good cause shown and a justice may require. 6.5 s.1A-1, Rule 40(b). Attorneys, under the guise of having business requiring their presence elsewhere, ought not to be allowed to delay, defeat or prevent a litigant from having his case tried or being heard on a motion at some reasonably suitable and convenient time.	Attorneys, under guise of having business requiring their presence elsewhere, ought not to be allowed to delay, defeat or prevent a litigant from having his case tried or being heard on a motion at some reasonably suitable and convenient time.	"Ought attorneys, under the guise of having business requiring their presence elsewhere, be allowed to delay, defeat or prevent a litigant from having his case tried or being heard on a motion at some reasonably suitable and convenient time?"	023255.docx	LEGALASE-00135632-2 LEGALASE-00135633	Condensed, SA	0.57	0	1	0	1	1	
471	<i>Conroy v. Scroggs</i> , 821 So. 2d 542	307A+716	As this court stated in <i>Glorioso v. Bucarisse</i> , 263 B.318 (La.App. 3d Cir. 12/07/94), 647 So.2d 1219, writ denied 95-0421 (La. 03/30/95), 651 So.2d 845(A) continuance may be granted in any case if there is good ground therefor. La. C.C.P. art. 1601. The trial judge must consider the particular facts in each case in deciding whether to grant or deny a continuance. <i>Katz, supra</i> . Similarly, <i>Andrews</i> , 503 So.2d 269 (La.App. 1st Cir. 1987), writ denied, 506 So.2d 1213 (La. 1/30/90). Equally important is the defendant's conditory right to have his case heard as soon as is practicable. <i>Lambert v. Heirs of Adams</i> , 325 So.2d 331 (La.App. 3d Cir. 1975), writ denied, 329 So.2d 458 (La. 1/19/76). The trial judge may also weigh the condition of the court docket, fairness to both parties and other litigants before the court, and the need for orderly and prompt administration of justice. <i>Keyes v. Johnson</i> , 542 So.2d 269 (La.App. 3d Cir. 12/89), writ denied, 546 So.2d 1213 (La. 1/30/90). Accordingly, a litigant who delays in seeking a continuance until the last minute is not entitled to employ another attorney. <i>Sands v. State Through La. State Med. [Center] School of Dentistry</i> , 458 So.2d 990 (La.App. 4th Cir. 1984), writ denied, 460 So.2d 1044 (La. 1/1984). However, because the defendant's desire to have the case against him tried is also a factor, the plaintiff is not entitled to indefinite continuances simply because he is unable to secure counsel. <i>See Every v. City of New Orleans</i> , 514 So.2d 556 (La.App. 4th Cir. 1987), writ denied, 515 So.2d 1111 (La. 1/1987).	Generally a litigant whose lawyer withdraws at or near trial may be entitled to a continuance to employ another attorney; however, because defendant's desire to have case against him tried is also a factor, plaintiff is not entitled to indefinite continuances simply because he is unable to secure counsel. LSA-C.C.P. art. 1601.	"Because defendant's desire to have case against him tried is also a factor, is a plaintiff entitled to indefinite continuances simply because he is unable to secure counsel?"	023909.docx	LEGALASE-00135384-4 LEGALASE-00135385	Condensed, SA, Sub	0.8	0	1	1	1	1	
472	<i>Thomson v. Farmers Mut. United Ins. Co.</i> , 240 Neb. 886	307A+483	At the hearing on the motion for summary judgment, Farmers introduced a number of exhibits, including the affidavit of Farmers' attorney, which stated that on June 28, 1983, a request for admission was served on the appellants' former attorney, Alan H. Graham, pursuant to Neb.C.R. 10, and that every 30-day (pre-1983) request for admission was served on the appellees' attorney, who was admitted. A request for admission under rule 36 is admitted unless within 30 days, or within such shorter or longer time as designated by the court, a written answer or objection is filed by the party to whom the request is directed.	Request for admission made pursuant to rules of discovery is deemed to have been admitted unless within 30 days, or within such shorter or longer time as designated by court, written answer or objection is filed by party to whom request is directed. Sup.Ct.Rules, Discovery Rule 36(a).	"Is a request for admission made pursuant to rules of discovery deemed to have been admitted unless within 30 days, or within such shorter or longer time as designated by the court, a written answer or objection is filed by a party to whom a request is directed?"	023790.docx	LEGALASE-00136749-9 LEGALASE-00136750	SA, Sub	0.54	0	0	1	1		
473															

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489	Prutt v. Prutt, 2013 IL App (1st) 13002	307A-683	For purposes of a section 2-619(b)(9) motion to dismiss, the defendant bears the initial burden to prove the affirmative matter defeating the plaintiff's claim. Epstein v. Chicago Board of Education, 178 IL2d 370, 383, 227 Ill. Dec. 560, 687 N.E.2d 1042 (1997). "The affirmative matter must be proven by affidavits or certain other evidentiary materials," or supported by affidavits or certain other evidentiary materials." Epstein, 178 IL2d at 383, 227 Ill. Dec. 560, 687 N.E.2d 1042. "Once a defendant satisfies this initial burden of going forward on the section 2-619(b)(9) motion to dismiss, the burden then shifts to the plaintiff, who must establish that the affirmative defense asserted either is "unfounded" or requires the resolution of an essential element of material fact before it is proven. Epstein, 178 IL2d at 383, 227 Ill. Dec. 560, 687 N.E.2d 1042 (quoting 735 ILCS 5/2-619(c) (West 1993)). We review a section 2-619 dismissal de novo. Van Meter, 207 IL2d at 388, 278 IL Dec. 555, 799 N.E.2d 273.	Once a defendant satisfies the initial burden of going forward on a motion to dismiss on ground that claim is barred by other affirmative matter avoiding the legal effect of or defeating the claim, the burden then shifts to the plaintiff, who must establish that the affirmative defense is unfounded or requires the resolution of an essential element of material fact before it is proven. Epstein, 178 IL2d at 383, 227 Ill. Dec. 560, 687 N.E.2d 1042 (quoting 735 ILCS 5/2-619(c)(9)).	When will the burden shift to plaintiff to establish that the defense is unfounded or requires the resolution of an essential element of material fact before it is proven?	09891.docx	LEGALASE-00096195-LEGALASE-00096197	Condensed, SA, Sub	0.6	0	839	15,344	14,873	21,876	9,079
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490	United States v. Burrah, 365 F.2d 395	61+10	We think that if a government officer threatens serious economic loss unless paid for giving a citizen his due, the latter is entitled to have the jury consider this, not as a complete defense like duress but as bearing on the specific intent required for the commission of bribery. 7 C1. United States v. Miller, 340 F.2d 421, 425 (4 Cir. 1965). While it is arguable that one can be true with respect to giving a citizen his due, it is not arguable that one can be true with respect to the prohibited 26 U.S.C. - 7214(b) offenses which have no requirement of specific intent, see United States v. Irwin, supra, 354 F.2d at 157, and carry a significantly lower punishment, we incline to the view that as to these offenses economic process is irrelevant.	If a government officer threatens serious economic loss unless paid for giving a citizen his due, the latter is entitled to have the jury consider this, not as a complete defense like duress, but as bearing on the specific intent required for the commission of bribery. 18 U.S.C.A. § 201(b).	"If a government officer threatens serious economic loss unless paid for giving a citizen his due, the latter is entitled to have the jury consider this?"	Bribery - Memo #958 - C-R055-003286437-AC055-003296438	Condensed, SA	0.62	0	1	0	0	1	1	
	Valence Operating Co. v. Andantino Petroleum Corp., 403 S.W.3d 435	307A+581	The purpose of allowing a trial court to dismiss a suit for want of prosecution is to provide a penalty when a party seeks to take advantage over its opponent by deliberate neglect and delay and a reluctance to have the merits of the case judged in a trial. The purpose of the Texas Rules of Civil Procedure is to "obtain a fair, just, and equitable adjudication of rights under established principles of law." Tex.R. Civ. P. 1. A dismissal for want of prosecution disposes of a case without deciding the substantive issues of the controversy. Consequently, a just resolution of the controversy is not required. See, e.g., United States v. S.W. Airlines v. Jaguar, 802 S.W. 2d 824, 836 (Tex.App-5th Perso 1993, writ denied); Clin Corp v. Coastal Water Authority, 949 S.W.2d 852, 858 (Tex.App.-Houston [1st Dist.] 1995, no writ). Considering these principles and the circumstances of this case, we conclude that the trial court did not abuse its discretion in overruling the motion to dismiss for want of prosecution.	Purpose of allowing a trial court to dismiss a suit for want of prosecution is to provide a penalty when a party seeks to take advantage over its opponent by deliberate neglect and delay and a reluctance to have the merits of the case judged in a trial.	Is the purpose of allowing a trial court to dismiss a suit for want of prosecution to provide a penalty when a party seeks to take advantage over its opponent by deliberate neglect and delay?	036746.docx	LEGALASE-00150049-LEGALASE-00150050	Condensed, SA	0.75	0	1	0	1	1	
491															
492	Dinger v. Grifols, 133 A.D.3d 816	307A-422	On a motion to dismiss a complaint pursuant to CPLR 3211(a)(7), the court must liberally construe the complaint, accept all facts as alleged in the pleading to be true, accord the plaintiff the benefit of every favorable pleading, and determine only whether the facts as alleged fit within any cognizable legal theory (see Iovov, Martinez, 84 N.2d 883, 87788, 614 N.Y.S.2d 9972, 638 N.Y.S.2d 511; Roberts v. R.R. B. Bagley & Bakery, Inc., 100 N.Y.S.2d 997, 100 N.Y.S.2d 511; see also, Iovov, Martinez, 84 N.Y.S.2d 997, 638 N.Y.S.2d 511; A.D.3d 1004, 1005, 885 N.Y.S.2d 1159). Further, the court may consider affidavits submitted by the plaintiff to remedy pleading defects (see Tripathi v. 125 N. 10, LLC, 130 A.D.3d 917, 918, 14 N.Y.S.3d 110). Nevertheless, bare legal conclusions and factual claims which are flatly contradicted by the record are not presumed to be true (see Parola, Gross & Atanino, P.C. v. Sashkino, 43 A.D.3d 1020, 1022, 848 N.Y.S.2d 104, see also Dabb v. Future Tech Inter., Inc., 63 A.D.3d at 1020, 848 N.Y.S.2d 111).	On a motion to dismiss a complaint for failure to state a cause of action, the court must liberally construe the complaint, accept all facts as alleged in the pleading to be true, accord the plaintiff the benefit of every favorable pleading to be true, accord the plaintiff the benefit of every favorable pleading, and determine only whether the facts as alleged fit within any cognizable legal theory, and determine only whether the facts as alleged fit within any cognizable legal theory. McIntney's CPLR 3211(a)(7).	"On a motion to dismiss a complaint pursuant to CPLR 3211(a)(7), should the court liberally construe the complaint and accept all facts as alleged in the pleading to be true?"	036682.docx	LEGALASE-00150244-LEGALASE-00150245	Condensed, SA	0.65	0	1	0	0	1	1
493	Scoville v. Shaffer, 9 S.W.3d 201	307A+594.1	In determining whether a party has demonstrated a lack of diligence in prosecuting a claim, a trial court may consider the entire history of the case, including the length of time the case was on file, the extent of discovery, the complexity of the issues, the diligence of the parties, the existence of reasonable excuses for delay, no single factor is dispositive, and a belated trial setting or stated readiness to proceed to trial does not conclusively establish diligence. Ozuva v. Southwest Bio Clinical Laboratories, 766 S.W.2d 900, 902 (Tex.App.-San Antonio 1988, writ denied).	In determining whether a party has demonstrated a lack of diligence in prosecuting a claim, a trial court may consider the entire history of the case, including the length of time the case was on file, the extent of discovery, the complexity of the issues, the diligence of the parties, the existence of reasonable excuses for delay, no single factor is dispositive, and a belated trial setting or stated readiness to proceed to trial does not conclusively establish diligence.	Will a court consider the entire history of the case in determining whether a party has demonstrated a lack of diligence in prosecuting a claim?	037011.docx	LEGALASE-00150668-LEGALASE-00150669	Condensed, SA	0.29	0	1	0	1	1	1

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	Moses v. Digbang, 430 S.W.3d 371	307A+622	Ms. Moses' complaint was dismissed for failure to state a claim upon which relief could be granted. Accordingly, we will consider her appeal under the standards of review applicable to motions to dismiss pursuant to Tennessee Rule of Civil Procedure 12.02(6). An essential purpose of a pleading is to give notice of the issues to be tried so that the opposing party will be able to prepare for trial. <i>Abshire v. Methodist Healthcare Memphis Hosps.</i> , 325 S.W.3d 498, 103 (Tenn.2010). A Tennessee Rule of Civil Procedure 12.02(6) motion to dismiss a complaint for failure to state a claim upon which relief can be granted tests the legal sufficiency of the complaint. <i>Laher v. Rains</i> , 235 S.W.3d 656, 660 (Tenn.2007). It seems the truth of all relevant material allegations, including those that are not favorable to the party moving to dismiss, must be taken as true. <i>See</i> <i>Riggs v. Burson</i> , 941 S.W.2d 444, 47 (Tenn.1997). These motions are not favored and are rarely granted in light of the liberal pleading standards contained in the Tennessee Rules of Civil Procedure. <i>Dobbs v. Guenther</i> , 846 S.W.2d 270, 273 (Tenn.Ct.App.1992). Moreover, pleas or counts contained in a complaint will be given the effect required by their content, without regard to the name given them by the pleader. <i>First Baptist Church of Memphis v. First Baptist Church of Memphis, Inc. v. African Methodist Episcopal Church, Inc.</i> , 477 S.W.2d 11 (Tenn.1972).	Motions to dismiss a complaint for failure to state a claim upon which relief can be granted are not favored and are rarely granted in light of the liberal pleading standards contained in the Tennessee Rules of Civil Procedure. Rules Civ.Proc., Rule 12.02(6).	Are motions to dismiss a complaint for failure to state a claim upon which relief can be granted more likely to be granted if the complaint alleges without evidentiary support any facts the pleader tries to prove consistent with the complaint?	037109.docx	LEGALSE-00150706-LEGALSE-00150707	Condensed SA, Sub	0.82	839	1	15,344	14,873	21,876	9,079
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494	Barnett v. Daley, 809 F. Supp. 1323	170A+1829	The standard governing this court decision on a Rule 12 (b) (6) motion is well established. Only if the allegations in the complaint, and all reasonable inferences drawn therefrom, could not support any cause of action may this court grant the motion. See generally <i>Charles Wright & Arthur Miller, SA Federal Practice and Procedure: Civil 2d</i> "1357 (West Publishing, 2d ed. 1990). The court, however, need not strain to find inferences favorable to the Plaintiffs which are not apparent on the face of the complaint. <i>Coates v. Illinois State Board of Education</i> , 559 F.2d 445, 447 (7th Cir.1977). The court must nevertheless interpret ambiguities in the complaint in favor of the plaintiffs, and the plaintiffs are free, in defending against the motions, "to allege without evidentiary support any facts the pleader tries to prove consistent with the complaint and show that there is a state of facts within the scope of the complaint that if proved would entitle them to judgment." <i>Early v. Bankers Life and Casualty Co.</i> , 559 F.2d 75, 79 (7th Cir. 1992).	On a motion to dismiss a claim for failure to state a cause of action, court must interpret ambiguities in complaint in favor of plaintiffs, and plaintiffs are free, in defending against motions to dismiss, to allege without evidentiary support any facts the pleader tries to prove consistent with the complaint. In order to show that there is a state of facts within the scope of the complaint that, if proved, would entitle them to judgment, Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.	"Is a plaintiff free, in defending against a motion to dismiss for the failure to state a claim on which relief could be granted, to allege without evidentiary support any facts the pleader tries to prove consistent with the complaint?"	037685.docx	LEGALSE-00152223-LEGALSE-00152224	SA, Sub	0.57	0	1		1		
495	Carney v. City of Chelsea, 925 F. Supp. 58	308+48	Exactly who, if anyone, had control over the receiver's actions is an issue crucial to this analysis, and an examination of common-law agency principles provides a suitable point of departure. The Restatement (Second) of Agency, portions of which have been incorporated into Massachusetts law, defines an agency relationship as having three essential characteristics: (1) the power of the agent to alter the legal relationships between the principal and third parties and the principal and himself; (2) the existence of fiduciary relationship toward principal with respect to matters within scope of agency; and (3) right of principal to control agent's conduct with respect to matters within scope of agency. Restatement (Second) of Agency § 52-54.	Restatement (Second) of Agency, portions of which have been incorporated into Massachusetts law, defines agency relationships as having three essential characteristics: (1) power of agent to alter legal relationships between principal and third parties and principal and himself; (2) existence of fiduciary relationship toward principal with respect to matters within scope of agency; and (3) right of principal to control agent's conduct with respect to matters within scope of agency. Restatement (Second) of Agency § 52-54.	"Is the power of the agent to alter the legal relationships between the principal and third parties, an essential characteristic of agency?"	Principal and Agent - Memo 359 - KC_25867.docx	ROSS-00349898-ROSS-00349892	Condensed SA, Sub	0.55	0	1		1	1	
496	Cop. v. LeBore, 40 Mass. App. Ct. 543	129+103	As the text in note 3 shows, "53, which has long been regarded as a vessel into which the Legislature has tossed a variety of conduct thought sufficiently offensive to society to be declared criminal. The words "with offensive and disorderly acts... across or annoy persons of the opposite sex" are among those that describe the conduct complained of in this case. A person is "disorderly" under G.L. c. 272, "53," if, with purpose to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he: (a) engages in fighting or threatening, or in violent or tumultuous behavior; or (b) makes unreasonable noise or offensively coarse utterance, gesture or display, or addresses abusive language to any person present; or (c) creates a hazardous or physically offensive condition by an act which serves no legitimate purpose of the actor." <i>Allegata v. Commonwealth</i> , 333 Mass. 287, 304, 231 N.E.2d 201 (1967). <i>Commonwealth v. Feigenbaum</i> , 404 Mass. 471, 474, 536 N.E.2d 325 (1989). "Public" means affecting or likely to affect persons in a place to which the public or a substantial group has access." <i>Allegata v. Commonwealth</i> , supra	For purpose of statute criminalizing disorderly conduct, person is "disorderly" if, with purpose to cause public inconvenience, annoyance or alarm, or recklessly creating risk thereof, he engages in fighting or threatening, or in violent or tumultuous behavior; or (b) makes unreasonable noise or offensively coarse utterance, gesture or display, or addresses abusive language to any person present; or (c) creates a hazardous or physically offensive condition by act which serves no legitimate purpose of actor. M.G.L.A. c. 272, § 53.	What conduct of an individual would come under the term disorderly?	014335.docx	LEGALSE-00153410-LEGALSE-00153411	SA, Sub	0.54	0	0	1	1		
497										0	0				
498	Martinez v. Farmington Motors, 931 P.2d 546	307A+683	To withstand a motion to dismiss, the plaintiff must make a prima facie showing of personal jurisdiction over the defendant. <i>Texaco Flyers, Inc. v. District Court</i> , 180 Colo. 432, 506 P.2d 867 (1973). In determining whether the plaintiff has met this burden, the allegations of the complaint, as well as any evidence introduced by the parties, may be considered, as well as any evidence introduced by parties, may be considered, and all factual disputes must be resolved in plaintiff's favor. <i>Allegata v. Commonwealth</i> , supra	To withstand a motion to dismiss for lack of jurisdiction, plaintiff must make prima facie showing of personal jurisdiction over defendant; in determining whether plaintiff has met burden, allegations of complaint, as well as any evidence introduced by parties, may be considered, and all factual disputes must be resolved in plaintiff's favor.	"To withstand a motion to dismiss for lack of jurisdiction, should a plaintiff make a prima facie showing of personal jurisdiction over a defendant?"	0381596.docx	LEGALSE-00153155-LEGALSE-00153156	Condensed SA	0.35	0	1	0	1		
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499	Shiffman v. K, 657 P.2d 401.	307A+581	These past decisions remind us that the evil to be avoided is the stagnant case cluttering a court's calendar or threatening harassment of the party defendant. A case stands stagnant when to the court it appears that for lack of activity of record neither party has taken the steps, acts or measures to be reasonably expected in the pursuit or defense of the particular cause of action. Rules Civ Proc., Rule 41(e).	For purposes of rule providing for dismissal of suit for want of prosecution, a case stands stagnant when to the court it appears that for lack of activity of record neither party has taken the steps, acts or measures to be reasonably expected in the pursuit or defense of the particular cause of action. Rules Civ Proc., Rule 41(e).	Does a case stands stagnant when to the court it appears that for lack of activity of record neither party has taken the steps to be reasonably expected in the pursuit or defense of the particular cause of action?	Final Procedure - 0008 - C - TM_61156.docx	ROSS-00229695-0055-000236996	Condensed, SA, Sub	0.6	839	15,344	14,873	21,876	9,079
									0	0	1	1	1	1
500	Shiffman v. K, 657 P.2d 401.	307A+581	These past decisions remind us that the evil to be avoided is the stagnant case cluttering a court's calendar or threatening harassment of the party defendant. A case stands stagnant when to the court it appears that for lack of activity of record neither party has taken the steps, acts or measures to be reasonably expected in the pursuit or defense of the particular cause of action. Rules Civ Proc., Rule 41(e).	For purposes of rule providing for dismissal of suit for want of prosecution, a case stands stagnant when to the court it appears that for lack of activity of record neither party has taken the steps, acts or measures to be reasonably expected in the pursuit or defense of the particular cause of action. Rules Civ Proc., Rule 41(e).	Does a case stands stagnant when to the court it appears that for lack of activity of record neither party has taken the steps to be reasonably expected in the pursuit or defense of the particular cause of action?	039096.docx	LEGAEASE-00155237-LEGAEASE-00155238	Condensed, SA, Sub	0.13	0	1	1	1	1
501	UMC Dev. v. D.C., 120 A.3d 37	307A+681	The plaintiff bears the burden to establish standing. In our en banc decision in Grayson, this court said that when a plaintiff's standing is called into question, the facts in the complaint must be accepted as true and must be "construed in favor of the complaining party." But we also acknowledged that a trial court jurisdiction inquiry under Rule 12 (b) (1) may extend beyond the facts pled in the complaint. Thus, when a plaintiff complaint under Super. Ct. Civ. R. 12 (b) (1), the trial court may "conduct an independent review of the evidence submitted by the parties, including affidavits, to resolve factual disputes concerning whether subject-matter jurisdiction exists." In Grayson, this court suggested that a court should not resolve factual disputes without holding an evidentiary hearing. We have never questioned, however, a trial court consideration of facts outside the pleadings that are undisputed by the parties. In the context of a trial court review, and if the plaintiff filing does not demand an appeal from a materials of record, the complaint must be dismissed.	For purposes of ruling on a motion to dismiss for want of standing, when a defendant makes a factual, as opposed to a legal, attack on the plaintiff's complaint, the trial court may conduct an independent review of the evidence submitted by the parties, including affidavits, to resolve factual disputes concerning whether subject-matter jurisdiction exists. Civil Rule 12(b)(1).	"Will the court conduct an independent review of the evidence submitted by the parties, including affidavits, to resolve factual disputes to determine subject-matter jurisdiction?"	024575.docx	LEGAEASE-00155896-LEGAEASE-00155897	SA, Sub	0.68	0	0	1	1	
									0	0	0	1	1	
502	Harris Civ. v. Sykes, 136 S.W.3d 635	268+742(4)	If a plaintiff has been provided a reasonable opportunity to amend after a governmental entity files its plea to the jurisdiction, and the plaintiff's amended pleading still does not allege facts that would constitute a viable claim, then the court should not grant summary judgment on the motion to dismiss. Such a dismissal is with prejudice because a plaintiff should not be permitted to refile jurisdiction once that issue has been finally determined. Before dismissing this case, the trial court allowed Sykes to file an amended petition, after which the court made a final adjudication that the Legislature has not waived governmental immunity under the Texas Tort Claims Act with respect to any claim that Sykes brought against Harris County.	If a plaintiff has been provided a reasonable opportunity to amend after a governmental entity files its plea to the jurisdiction, and the plaintiff's amended pleading still does not allege facts that would constitute a viable claim, then the court should not grant summary judgment on the motion to dismiss. Such a dismissal is with prejudice because a plaintiff should not be permitted to refile jurisdiction once that issue has been finally determined. Before dismissing this case, the trial court allowed Sykes to file an amended petition, after which the court made a final adjudication that the Legislature has not waived governmental immunity under the Texas Tort Claims Act with respect to any claim that Sykes brought against Harris County.	Is a dismissal after a plaintiff has had a reasonable opportunity to amend pleadings and after a governmental entity files its plea to jurisdiction with prejudice?	024906.docx	LEGAEASE-00157301-LEGAEASE-00157302	SA, Sub	0.32	0	0	1	1	
503	Carwell v. State of Connecticut, 310 U.S. 296	123+109	Each of the cases embraces a great variety of conduct destroying or menacing public order and tranquility. It includes not only violent acts but acts and words likely to produce violence in others. No one would have the hardihood to suggest that the principle of freedom of speech sanctions incitement to riot or that religious liberty commotes the privilege to exhort others to physical attack upon those belonging to another sect. When clear and present danger of riot, disorder, interference with traffic upon the public streets, or other substantial injury is shown or threatened by unlicensed and unregulated speech, it is no part of the business of government to allow that speech to be uttered. Equally obvious is that a state may not unduly suppress free communication of views, religious or other, under the guise of conserving desirable conditions. Here we have a situation analogous to a conviction under a statute sweeping in a great variety of conduct under a general and indefinite characterization, and leaving to the executive and judicial branches too wide a discretion in its application.	The state has power to prevent or punish when clear and present danger of riot, disorder, interference with traffic upon public streets, or other immediate threat to public safety, peace or order, appears, but state may not unduly suppress free communication of views, religious or other, under guise of conserving desirable conditions.	"Whether the state has the power to prevent or punish when a clear and present danger of riot, disorder, interference with traffic upon public streets, or other immediate threat to public safety, peace or order, appear?"	Disorderly Conduct - Memo 9 Pk_64037.docx	ROSS-00032342-ROSS-00032343	Order, SA	0.69	1	0	0	1	

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	<i>Fonseca v. Fong</i> , 167 Cal. App. 4th 922	365+18.43	The 11th Circuit established a three-part test for determining whether a state statute relating to immigration is preempted by federal law. The test asks: (1) whether the statute "stands as an obstacle to the accomplishment of the federal purpose"; (2) whether the statute "stands as an obstacle to the accomplishment of the federal purpose"; and (3) whether the statute "stands as an obstacle to the accomplishment of the federal purpose".	Where a state statute relating to immigration does not attempt to regulate immigration and applies to an area in which Congress did not regulate immigration, the statute is preempted by federal law. The statute may still be preempted by federal law under a third test, which is whether the statute stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress in enacting the Immigration and Nationality Act. U.S.C.A. Const. Art. 6, cl. 2; Immigration and Nationality Act, § 101 et seq., 8 U.S.C.A. § 1101 et seq.	Will a state statute that does not attempt to regulate immigration be preempted when it stands as an obstacle to the accomplishment of the full purposes and objectives of Congress?	Alens, Immigration and Citizenship - Memo 60 - RK_64794.docx	ROSS-003240091-ROSS-003240092	SA, Sub	0.66	839	15,344	14,873	21,876	9,079
504														
	<i>In re Mario S.</i> , 38 Misc. 3d 444	24+179	The creation of the special immigrant juvenile classification "shall [b]e a congressional intent to assist a limited group of abused children to remain safely in the country with a means to apply for lawful permanent resident status." (Garcia v. Holder, 659 F.3d 1261, 1271 [9th Cir. 2011]).	Creation of the special immigrant juvenile (SIJ) status above a congressional intent to assist a limited group of abused children to remain safely in the country with a means to apply for lawful permanent resident status. Immigration and Nationality Act, § 101(a)(27)(J), 8 U.S.C.A. § 1101(a)(27)(J).	Was Special Immigrant Juvenile (SIJ) status created to assist or help a limited group of abused children to remain safely in the country with a means to apply for lawful permanent resident (LPR) status?	Alens, Immigration and Citizenship - Memo 60 - RK_64794.docx	ROSS-00311808-ROSS-00311809	SA, Sub	0.55	0	0	1	1	
505	<i>Wynter v. Our Lady of Mercy Med. Ctr.</i> , 3 A.D.3d 376	307A+699	If a case is dismissed for failure to timely effect substitution pursuant to CPLR 102.1, the plaintiff, in order to achieve reinstatement, must demonstrate a prima facie showing of merit, a reasonable excuse for the delay, and no undue prejudice to the defendants. McKinney's CPLR 102.1.	If a case is dismissed for failure to timely effect substitution pursuant to the rules of civil procedure, the plaintiff, in order to achieve reinstatement, must demonstrate a prima facie showing of merit, a reasonable excuse for the delay, and no undue prejudice to the defendants. McKinney's CPLR 102.1.	"Should the plaintiff, in order to achieve reinstatement, demonstrate a prima facie showing of merit, a reasonable excuse for the delay, and no undue prejudice to the defendants?"	Perital Procedure - Memo 11172 - C - RF_64383.docx	ROSS-003294500	Condensed SA, Sub	0.61	0	1	1	1	1
506														
	<i>Thompson v. Houston</i> , 2003 PA Super 467	307A+697	In this appeal from the dismissal of defendant's arbitration appeal and the award of summary judgment to plaintiff, we are concerned only with the excuse given by counsel in light of the circumstances surrounding the dismissal. "Shiv v. Brennan, 764 A.2d at 610. Some of the circumstances a court should consider in determining whether counsel's failure to appear should be excused are: 1) whether the failure to appear was inadvertent; 2) whether counsel's failure to appear was part of a pattern of improper behavior, misconduct or abuse; 3) whether the court attempted to contact counsel prior to dismissing the appeal; 4) whether the opposing party would be prejudiced by the delay; and 5) whether the court gave any consideration to lesser sanctions.	Some of the circumstances a court should consider in determining whether the failure to appear was inadvertent: 1) whether the failure to appear was part of a pattern of improper behavior, misconduct or abuse; 2) whether the court attempted to contact counsel prior to dismissing the appeal; 4) whether the opposing party would be prejudiced by the delay; and 5) whether the court gave any consideration to lesser sanctions.	Should some of the circumstances a court should consider in determining whether counsel's failure to appear for trial be excused?	039770.docx	LEGALCASE-00159324-LEGALCASE-00159324	SA, Sub	0.36	0	0	1	1	
507														
	<i>Hawes v. 1997 Jeep Wrangler</i> , 602 N.W.2d 874	135H+25	In <i>Ursey</i> , the Supreme Court clarified the appropriate two-step inquiry for determining whether an in rem civil forfeiture is "punishment" for double jeopardy purposes. First, a court must examine the governing statute to determine whether the legislative body intended the forfeiture proceedings to be criminal/punitive or civil/remedial.	In determining whether an in rem civil forfeiture is "punishment" for double jeopardy purposes, the court must first examine the governing statute to determine whether the legislative body intended the forfeiture proceedings to be criminal/punitive or civil/remedial, and then must consider whether the party challenging the statute has shown by the evidence that the legislative body intended the forfeiture proceedings to be criminal or punitive.	"In determining whether an in rem civil forfeiture is "punishment" for double jeopardy purposes, should the court first examine the governing statute to determine whether the legislative body intended the forfeiture proceedings to be criminal or punitive?"	Double Jeopardy - Memo 16 - C - SS_65115.docx	ROSS-00329276-ROSS-00329277	Condensed SA, Sub	0.35	0	1	1	1	1
508														
	<i>State v. Greene</i> , 196 W. Va. 500	135H+25	We hold that to determine whether a particular statutory defined penalty is civil or criminal for the purpose of double jeopardy under Article II, "5 of the West Virginia Constitution, we must ask: (1) whether the legislature, in establishing the penalizing mechanism, indicated either expressly or implicitly that the statutory penalty in question was intended to be punitive rather than remedial; and (2) whether the legislature has indicated an intention to establish a civil penalty, whether the statutory scheme was so punitive either in purpose or effect as to negate that intention. See <i>United States v. One Assortment of 89 Firearms</i> , 465 U.S. 384, 382-383, 104 S.Ct. 1099, 1100, 79 L.Ed.2d 361, 368 (1984); <i>United States v. Ward</i> , 448 U.S. 242, 248, 100 S.Ct. 2696, 2641, 65 L.Ed.2d 792, 793 (1980).	To determine whether particular statutory defined penalty is civil or criminal for double jeopardy purposes, court must ask whether legislature, in establishing penalty, indicated either expressly or implicitly that statutory penalty was intended to be civil or criminal, and, if legislature indicated intention to establish civil penalty, whether legislature indicated an intention to establish a civil penalty to negate that intention. U.S.C.A. Const. Amend. 5, 5 M.S.A. Const. Art. 1, § 5.2.	"Should a court ask whether a legislature, in establishing a penalty, indicated either expressly or implicitly that statutory penalty was intended to be civil or criminal?"	015423.docx	LEGALCASE-00160652-LEGALCASE-00160653	Condensed SA, Sub	0.4	0	1	1	1	1
509														

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510	People v. Brooks, 133 Cal. App. 3d 200	92-3781	The question thus becomes whether a personal or corporate check, which is a bill of exchange within the meaning of M.C.L.A.s 750.248, Supra, differs materially and substantially from the bank bill or note referred to in M.C.L.A.s 750.233, Supra. Bank bills and notes denote currency and may pass readily from hand to hand. Dixon, 13 App.Div. 77-42, N.Y.S. 979 (1896); People v. Beulion, 205 Cal App 2d 262, 24 Cal Rptr. 19 (1962). It is thus readily apparent that this crime of uttering and publishing a bank bill or note pursuant to M.C.L.A. 750.233, Supra, is based upon material differences and substantial distinctions with regard to the subject matter from the crime of uttering and publishing a check pursuant to M.C.L.A.s 750.249. Supra. Since there is a rational distinction between the two crimes, the two crimes are not identical and the differing sentences violate the equal protection clauses of the State and Federal Constitutions. Neither can it be said that the statutes allow the prosecutor to arbitrarily elect between the two crimes, since any forged document must fall into one or the other of the two classes, but not both.	Crime of uttering and publishing a bank bill or note is based upon material differences and substantial distinctions, with regard to subject matter, from crime of uttering and publishing a check, since bank bills and notes denote currency issued under legal restriction, while a check is not. The two crimes are not identical and the differing sentences violate the equal protection clauses of the State and Federal Constitutions since there is a rational distinction between the subject matter of the two offenses, and a prosecutor may not arbitrarily elect between the two crimes since any forged document must fall into one or the other of the two classes. M.C.L.A. 55 750.249, 750.253.	Does the statutory scheme of imposing different maximum sentences for the crime of forging or uttering and publishing a forged instrument violate equal protection of the law?	018452.docx	LEGALCASE-00161868-LEGALCASE-00161869	15_344	14,873	21,876	9,029	1	1	1
	Kourtsouts v. Kourtsouts v. Chakraborty, 254 A.2d 394	3074-697	It is well established that a party wishing to restore a case to the trial calendar after dismissal pursuant to CPLR 3404 may have the action reinstated upon a demonstration of four essential factors: (1) the case has merit; (2) there is a reasonable excuse for the delay; (3) there was no intent to abandon the matter; and (4) there is no prejudice to the moving party (see, e.g., Priddy v. Catholic Med. Ctr. of Brooklyn & Queens, 237 A.D.2d 434; 555 N.Y.S.2d 536; Sweden v. Bourke, 238 A.D.2d 434; 555 N.Y.S.2d 536; 133 App. Div. 2d 434; 555 N.Y.S.											

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517	People v. McNally, 107 Cal.App. 3d 587	113H+59	It is well settled that (1) a person is in legal jeopardy for an offense when placed on trial in a court of competent jurisdiction, on a charge of a crime, and (2) a person is in jeopardy of third jury without a verdict is equivalent to acquittal and bars a retrial, unless the defendant consented to the discharge or legal necessity required it. (Curry v. Superior Court (1970) 2 Cal. 3d 707, 712, 87 Cal.Rptr. 361, 470 P.2d 345).	A person is in legal jeopardy for an offense when placed on trial in a court of competent jurisdiction, on a charge of a crime, and (2) a person is in jeopardy of third jury without a verdict is equivalent to acquittal and bars a retrial unless defendant consented to discharge or legal necessity required it.	"Is a person in legal jeopardy for an offense when placed on trial in court of a competent jurisdiction, on a valid accusatory pleading?"	015802.docx	LEGALCASE-00166549-LEGALCASE-00166550	Condensed, SA	0.29	839	1	15,344	21,876	9,079
518	Zelman v. Simmons-Harris, 536 U.S. 619	141E+94(13)	School voucher programs, enacted for valid secular purpose of providing educational assistance to poor children in demonstrably failing public schools, are constitutional even though the majority of participating students had enrolled in religiously affiliated schools. Program was neutral in all respect toward religion, and any direction of government aid to religious schools was result of individual recipients' independent private choices. U.S.C.A. Const.Amend. 1, Ohio R.C. 33.313 97E-3313.979.	School voucher program, enacted for valid secular purpose of providing educational assistance to poor children in demonstrably failing public schools, is constitutional even though majority of participating students had enrolled in religiously affiliated schools. Program was neutral in all respect toward religion, and any direction of government aid to religious schools was result of individual recipients' independent private choices. U.S.C.A. Const.Amend. 1, Ohio R.C. 33.313 97E-3313.979.	Do student grant programs violate the Establishment Clause even though majority of participating students had enrolled in religiously affiliated schools?	017165.docx	LEGALCASE-00166563-LEGALCASE-00166564	Condensed, SA, Sub	0.11	0	1	1	1	1
519	Home Owners' Loan Corp. v. Sear, 363 U.S. 451, 121 Conn. 221	366+1	On the allowed only where the person seeking to take advantage of the doctrine of subrogation is in a better position than the insured to make an agreement that he shall have the benefit of the security to the right to which he claims to succeed. There is authority to support this contention, but for the most part it represents an older view which has been modified in the course of the development of the doctrine. We do not take a narrow view of that doctrine. "Subrogation is a doctrine which equity borrowed from the civil law and administrators so as to secure justice without regard to form or mere technicality. Story's Equity Jurisprudence § 596, 2d ed. 1796, states the doctrine as follows: "Subrogation is a doctrine in which a debt for which another is primarily responsible is discharged by the payment of a debt by him who sought in equity and good conscience to pay it. Equity seeks by this action, as it does by that for reimbursement, contribution, and exoneration, to prevent the unearned enrichment of one party at the expense of another," by creating a relation somewhat analogous to a constructive trust in favor of the subrogee, or party making the payment, in all legal rights held by the creditor." 5 Pomeroy, Equitable Remedies (2d Ed. 1943): "First Taking District v. National Surety	Subrogation is a legal fiction through which a person who, not as a volunteer or in his own wrong, and in absence of outstanding and unpaid debt of the insured, is placed in a position to make an agreement for his benefit, and the doctrine is broad enough to include every instance in which one party pays the debt for which another is primarily answerable, and which in equity and good conscience should have been discharged by such other.	Does subrogation include every instance in which one party pays a debt for which another is primarily answerable?	06467.docx	LEGALCASE-00084324-LEGALCASE-00084326	Order, SA, Sub	0.74	1	0	1	1	1
520	State Bar of California v. Starnell, 148 Cal. App. 4th 650	366+1	Subrogation, a legal fiction, is broadly defined as the substitution of one person in the place of another with reference to a lawful claim or right. It is a right which is purely derivative and it permits a party who has been required to satisfy a loss created by a third party's wrongful act to step into the shoes of the loser and pursue recovery from the responsible wrongdoer. Stated another way, it is a substitution of one person in place of another with reference to a lawful claim, demand or right, so that he who has been required to satisfy a loss created by a third party's wrongful act or claim, and its rights, remedies, or securities." 179 Am.Jur.2d (2001).	Subrogation is a right which is purely derivative and it permits a party who has been required to satisfy a loss created by a third party's wrongful act to step into the shoes of the loser and pursue recovery from the responsible wrongdoer. Stated another way, it is a substitution of one person in place of another with reference to a lawful claim, demand or right, so that he who has been required to satisfy a loss created by a third party's wrongful act or claim, and its rights, remedies, or securities." 179 Am.Jur.2d (2001).	Is subrogation a right which is purely derivative and it permits a party who has been required to satisfy a loss created by a third party's wrongful act to step into the shoes of the loser and pursue recovery from the responsible wrongdoer?	064555.docx	LEGALCASE-00084349-LEGALCASE-00084351	Condensed, SA	0.89	0	1	0	1	1
521	Scott v. City of New York, 591 F. Supp. 2d 554	170A+614	The Federal Rules of Evidence favor the admission of all relevant evidence. Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Fed. R. Evid. 401. A fact is of consequence to the determination of the action when the evidence is clearly inadmissible on all potential grounds." Indeed, courts considering a motion in limine may reserve judgment until trial, so that the motion is placed in the appropriate factual context. Moreover, a court's ruling regarding a motion in limine "is subject to change when the case unfolds. Indeed even if nothing unexpected happens at trial, the district judge is free, in the exercise of sound judicial discretion, to alter a previous in limine ruling."	A court's ruling regarding a motion in limine is subject to change when the case unfolds, indeed even if nothing unexpected happens at trial, the district judge is free, in the exercise of sound judicial discretion, to alter a previous in limine ruling.	"Even if nothing unexpected happens at trial, is the district judge free, in the exercise of sound judicial discretion, to alter a previous in limine ruling?"	028761.docx	LEGALCASE-00122584-LEGALCASE-00122585	Condensed, SA	0.7	0	1	0	1	1

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522	United States v. Sumof 570,990,605, 991 F. Supp. 2d 154	221+142	The act of state doctrine "applies when the relief sought or the defense interposed would require a court in the United States to declare invalid the official act of a foreign sovereign performed within its boundaries." United States v. One Gulfstream G/V Jet Aircraft, 941 F.Supp.2d 111 (D.D.C.2013) (citing W.S. Kirkpatrick & Co., Inc. v. Evtl., Technics Corp., Int'l, 493 U.S. 400, 409, 110 S.Ct. 701, 107 L.Ed.2d 816 (1990)). However, as is explained above, the plaintiff's requested relief would not require that any official Afghan act be declared invalid because a determination of guilt or innocence is not dispositive of whether the defendant assets should be civilly forfeited under United States' law. Second, the Afghanistan Executive Order would not need to be declared invalid because it determined that "Mr. Shadmam (was) not guilty under Afghan law." Claimants' Mot. to Dismiss at 33, not whether the defendant assets are subject to forfeiture under United States' law. Finally, the claimants argue that the Afghanistan government asserted exclusive jurisdiction, but the exhibits they cite do not explicitly claim exclusive authority to adjudicate this in rem civil forfeiture. See Claimants' Mot. to Dismiss, Ex. 26 ("It is an authority of the courts of the I.R.A.,"); id. ("[A]ddressing the issue is an authority of the courts of Afghanistan").	The act of state doctrine applies when the relief sought or the defense interposed would require a court in the United States to declare invalid the official act of a foreign sovereign performed within its boundaries.	How does the act of state doctrine apply when the relief sought by the defense or the defense interposed would require a court in the United States to declare invalid the official act of a foreign sovereign performed within its boundaries?	International Law - Memo # 86 - C - 11.docx	ROSS-002825792-ROSS-00335783	Condensed, SA	0.84	839	15,344	34,873	21,876	9,079	
	In re Uthb's Estate, 201 Misc. 1202	221+162	It may not be amiss to point out that comity is a sense of mutual regard founded on identity of position and similarity of institutions. Fisher, Brown & Co. v. Fielding, 67 Conn. 91, 108, 34 A. 714, 32 L.R.A. 236; Russian Socialist Federated Soviet Republic v. Cibrario, 235 N.Y. 255, 258, 139 N.E. 259, 260. As was said in King v. Sarria, 69 N.Y. 24, 31: "It is the necessary intercourse of the subjects of independent governments, which gives rise to a sort of compact, that their municipal institutions shall receive a degree of reciprocal efficacy and sanction within their respective domains. It is not the statutes of one community which extend their controlling power into the territories of another; it is the sovereign of each who adopts the foreign rule, and applies it to those particular cases in which it is found necessary to protect and cherish the municipal intercourse of his subjects, with those of the country whose laws he adopts; (Per 65 Sup. Rem. Romilly, Arguendo, Sheddell v. Patrick, 1 Maquereau's H. of L. Cases, 524.)"	Necessary intercourse between subjects of independent governments gives rise to a sort of compact that their municipal institutions shall receive a degree of reciprocal efficacy and sanction within their respective domains.	"Is it the necessary intercourse of the subjects of independent governments, which gives rise to a sort of compact that their municipal institutions shall receive a degree of reciprocal efficacy and sanction within their respective domains?"	020719.docx	LEGALSE-00135719-LEGALSE-00135720	Condensed, SA	0.79	0	1	0	1	1	
523	McRoberts v. Bridgestone Americas Holding, 365 Ill. App. 3d 1039	307A+560	Although the Illinois Supreme Court has explained that a dismissal under Rule 103(b) is within the sound discretion of the trial court, the standard for the trial court is to be applied when determining whether a plaintiff was duly diligent in effecting the service of process is an objective one, with each case turning on its own specific facts.Segal v. Sacco, 136 Ill.2d 282, 286, 144 Ill. Dec. 360, 555 N.E.2d 719, 720 (1990); Womick v. Jackson County Nursing Home, 137 Ill. 2d 371, 381, 148 Ill. Dec. 719, 561 N.E.2d 245, 29 (1990); Kreykes Electric, Inc. v. Malik & Harris, 237 Ill. App.3d 916, 940, 232 Ill. Dec. 343, 697 N.E.2d 885, 888 (1998); Hinkle v. Henderson, 135 F.3d 521, 524 (7th Cir. 1998). In other words, the trial court's determination of a plaintiff's lack of diligence "is a fact-intensive inquiry suited to balancing, not bright lines." Hinkle, 135 F.3d at 524. Furthermore, there is no set time limit during which service must be effected, and each decision on a Rule 103(b) motion to dismiss must be "based on the facts and circumstances in each particular case." Marks v. Rueben H. Donnelly, Inc., 260 Ill. App. 3d 1042, 1047, 201 Ill. Dec. 393, 636 N.E.2d 825, 829 (1994).	For purposes of motion to dismiss for a failure to act with reasonable diligence in effecting the service of process, the standard the trial court is to apply when determining whether a plaintiff was duly diligent in effecting the service of process is an objective one, with each case turning on its own specific facts; the trial court's determination of a plaintiff's lack of diligence is a fact-intensive inquiry suited to balancing, not bright lines. Sup. Ct. Rules, Rule 103(b).	"For purposes of motion to dismiss for a failure to act with reasonable diligence in effecting the service of process, is the standard the trial court to apply when determining whether a plaintiff was duly diligent?"	033613.docx	LEGALSE-00143866-LEGALSE-00143867	Condensed, SA, Sub 0.59	0	1	0	1	1	1	1
524	S.E.C. v. Jackson, 908 F. Supp. 2d 834	349B+67.10	The "facilitating" payments exception was intended to provide a "very limited exception" to the kinds of bribes to which the FCPA does not apply." Key I, 359 F.3d at 750. The exception allows for payments to foreign officials "the purpose of which is to "expedite or secure the performance of a routine government action," 15 U.S.C. 78dd-1(b), which refers to a "very narrow category" of largely non-discretionary, ministerial activities performed by mid- or low-level foreign functionaries." Key I, 359 F.3d at 751. While the statute specifically includes "obtaining permits" as an example of the type of action that typically qualifies as routine, the Court interprets the example to refer to obtaining permits to which one is properly entitled. See H.8 Rep. No. 95-540, at 8 ("explaining that Congress intended to exclude from the FCPA's reach "those payments which merely move a particular matter toward an eventual act or decision or which do not involve any discretionary action").	Does FCPA allow for payments to foreign officials for the purpose of expediting or securing the performance of a routine government action?	Does FCPA allow for payments to foreign officials for the purpose of expediting or securing the performance of a routine government action?	012329.docx	LEGALSE-00145822-LEGALSE-00145823	Condensed, SA	0.49	0	1	0	1	1	
525	Manning v. Pioneer Sav. Bank, 56 Misc. 3d 790	307A+679	In determining a motion to dismiss a complaint pursuant to CPLR 3211(a)(7), the court's role is ordinarily limited to determining whether the complaint states a cause of action (Frank v. Danier-Crysler Corp., 292 A.D.2d 118, 741 N.Y.S.2d 9 (1st Dept. 2002)). When considering a motion to dismiss pursuant to CPLR 3211(a)(7) for failure to state a cause of action, the court must "accept the facts as alleged in the complaint as true, accord plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (Monoran v. City of New York, 9 N.Y.3d 825, 827, 842 N.Y.S.2d 756, 874 N.E.2d 720 [2007]).	When considering a motion to dismiss for failure to state a cause of action, the court must accept the facts as alleged in the complaint as true, accord plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory. McKinney's CPLR 3211(a)(7).	"In determining a motion to dismiss a complaint for failure to state a cause of action, is the court's role ordinarily limited to determining whether the complaint states a cause of action, is the court's role ordinarily limited to determining whether the complaint states a cause of action?"	037003.docx	LEGALSE-00150363-LEGALSE-00150364	Condensed, SA, Sub 0.52	0	0	1	1	1	1	
526	Bellville v. Dir. of Revenue, State of Mo., 825 S.W.2d 623	307A+587	A dismissal for failure to prosecute is an abuse of discretion where a party timely files all required pleadings, responds to all discovery required, appears at the time and place scheduled for trial and is ready and willing to present evidence. In this case, the entry of judgment against the Director without a hearing was plain error.	Dismissal for failure to prosecute is an abuse of discretion where a party timely files all required pleadings, responds to all discovery required, appears at the time and place scheduled for trial, and is ready and willing to present evidence.	"In dismissing for failure to prosecute is an abuse of discretion where a party timely files all required pleadings, responds to all discovery required, where a party timely files all required pleadings, responds to all discovery required, appears at the time and place scheduled for trial, and is ready and willing to present evidence?"	Pretrial Procedure - Memo # 10401 - C - AC_63551.docx	ROSS-003278679	Condensed, SA	0.28	0	1	0	1	1	
527															

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S32	Grant v. Target Corp., 126 F. Supp. 3d 183	237-4	"Defamation is the publication of material by one without a privilege to do so which ridicules or treats the plaintiff with contempt." North Shore Pharmacy Servs., Inc. v. Breast Associates Consulting LLC, 491 F.Supp.2d 11, 124 (D.Mass.2007) [quoting Corliss v. Vreeland, 480 Mass. 314, 787 N.E.2d 651 (Mass.2002)] ("The defendant has failed to establish that the defendants acted in bad faith for the publication of false statements regarding the plaintiff's capability of damaging the plaintiffs reputation in the community, which either caused economic loss or is actionable without proof of economic loss.") Dragons v. School Comm. of Melrose, 64 Mass.App.Ct. 429, 437, 883 N.E.2d 679 [2005] [internal quotation and citation omitted]. "The level of fault required varies between negligence for statements concerning private persons) and actual malice for statements concerning public officials and public figures." Restatement (Second) Torts § 411B(1). Remick v. Rappaport, 438 Mass. 627, 630, 782 N.E.2d 508 [2003].	To prove defamation under Massachusetts law, a plaintiff must establish that the defendant was at fault for the publication of a false statement regarding the plaintiff, capable of damaging the plaintiff's reputation in the community, which either caused economic loss or is actionable without proof of economic loss. The court found that there was no evidence for statements concerning private persons and actual malice for statements concerning public officials and public figures.	What is the level of fault required for public and private persons in defamation?	Ibel and Slinder - Memo #42 - RK.docx	R0SS-00332417-R0SS-003312419	SA, Sub	0.51	839 0	15,344 0	14,873 1	21,876 1	9,029
S33	Helmreich & Payne Int'l Drilling Co. v. Belkiran Republic of Venezuela, 971 F. supp. 2d 49	221+342	The act of state doctrine "precludes the courts of this country from inquiring into the validity of the public acts a recognized foreign sovereign power committed within its own territory." Banco Nacional de Cuba v. Sugarcorp, 370 S. Ct. 55, 59 (U.S.), 41 L Ed 2d 804 [1964], This Supreme Court decision established that the act of state doctrine interpreted would require a court in the United States to declare invalid this official act of a foreign sovereign performed within" its boundaries." World Wide Minerals, Ltd. v. Republic of Kazakhstan, 296 F.3d 1154, 1164 [D.Cir-2002] [internal brackets omitted] (quoting W.S. Kirkpatrick & Co. v. Environmental Testronics Corp., 493 U.S. 400, 405, 110 S.Ct. 701, 107 L.Ed.2d 816 [1990]). The doctrine is to be interpreted and applied in accordance with the policy interests of international comity, respect for sovereignty, and the avoidance of embarrassment to the Executive Branch in its conduct of Foreign relations." W.S. Kirkpatrick, 493 U.S. at 408, 110S.Ct. 701; Nemieriam v. Fed. Democratic Republic of Ethiopia, 491 F.3d 470, 477 n. 7 [D.C.Cir-2007]. However, the party raising the defense bears the burden to affirmatively show that an act of state has occurred and "that no bar to the doctrine is applicable under the factual circumstances." Hamiree de Ardenas v. Weinberger, 765 F.2d 5300, 5354 [O.Cir-1984] (en banc), cert. denied, 475 U.S. 1133, 160 S.Ct. 283, 86 LEd.2d 4235 [1985].	The act of state doctrine is to be interpreted and applied in accordance with the policy interests of international comity, respect for the sovereignty of other nations on their own territory, and the avoidance of embarrassment to the Executive branch in its conduct of foreign relations.	% the act of state doctrine to be interpreted and applied in accordance with the policy interests of international comity, respect for the sovereignty of other nations on their own territory, and the avoidance of embarrassment to the Executive branch in its conduct of foreign relations?"	International Law - Memo #521 - C-SL.docx	R0SS-003325077-R0SS-003325079	SA, Sub	0.81	0 0	0 0	1 1	1 1	1
S34	State v Johnston, 249 Ga. 413	110+392,40	A motion in limine is a pretrial motion which may be used two ways: 1.) The movant seeks, nota final ruling on the admissibility of evidence, but only to prevent the mention by anyone during the trial, of a certain item of evidence or area of inquiry until it's admissability can be determined after voir dire testimony has been heard by the jury. See State ex rel. Moore v. State, 268 Ind. 441, 376 N.E.2d 675, 481 [1978]; Twford v. Wolbe, 720 N.W.2d 939 [Iowa 1974]; Redding v. Ferguson, 501 S.W.2d 717, 722 [Tex.Civ.App.1973]. 2) The movant seeks a ruling on the admissibility of evidence prior to the trial. The trial court has an absolute right to refuse to decide the admissibility of evidence, allegedly violative of some ordinary rule of evidence, prior to trial. Cf. Higgins v. State, supra, Coats v. State, 234 Ga. 659, 217 S.E.2d 80 [1975]. If, however, the trial court does make such a determination, it is subject to review. In fact, the court's determination of admissibility is similar "to a preliminary ruling on evidence at a pretrial conference" and it controls the subsequent course of action, unless modified at trial to prevent manifest injustice." Harley-Davidson Motor Co. v. Daniel, 244 Ga. 284, 285-6, 260 S.E.2d 20 [1979].	Trial court has absolute right to refuse to decide admissibility of evidence allegedly violative of some ordinary rule of evidence, prior to trial.; if, however, trial court decides to rule on admissibility of evidence prior to trial, court's determination of admissibility is similar to a preliminary ruling on evidence at a pretrial conference and it controls the subsequent course of action unless modified at trial to prevent manifest injustice.	"If the trial court decides to rule on the admissibility of evidence prior to trial, is the court's determination of admissibility similar to a preliminary ruling on evidence at a pretrial conference?"	Pretial Procedure - Memo #890 - C-KA.docx	R0SS-00332665-R0SS-003325666	Condensed, SA	0.64	0 1	0 1	0 1	1 1	1
S35	Conroy v. Uhlik, 353 Ill. App. 3d 863	307A-3	An action in limine permits a party to obtain an order excluding inadmissible evidence and prohibiting comment concerning such evidence during closing arguments. The moving party will thereby be protected from any prejudicial impact from the comment and the making of objections in front of the jury. However, a court is disadvantaged in ruling on a motion in limine because it is considered in a vacuum, before the presentation of the full evidence at trial that may justify admission or require exclusion. Trial judges should attempt to enter narrow in limine orders rather than broad ones, as they are more likely to survive appeal, and make the orders clear and precise so that all parties concerned have an accurate understanding of their limitations. An unclear order in limine is worse than no order at all; even if the court concludes that the evidence is inadmissible, it has the discretion to deny the motion in limine before trial. Cunningham v. Millers General Insurance Co., 227 Ill.App.3d 201, 205, 169 Ill.Dec. 200, 591 N.E.2d 80 [1992]. It is well settled that both the motion in limine and the resulting order should be in writing to avoid confusion. See, e.g., People v. Williams, 233 Ill.App.3d 813, 825, 175 Ill.Dec. 45, 599 N.E.2d 1051 [1992]. Cunningham, 227 Ill.App.3d at 205, 169 Ill.Dec. 200, 591 N.E.2d 80.	Trial judge should attempt to enter narrow in limine orders, anticipate proper evidence that might be excluded by the orders, and make the orders clear and precise so that all parties concerned have an accurate understanding of their limitations.	"Should trial judges attempt to enter narrow in limine orders, anticipate proper evidence that might be excluded by the orders, and make the orders clear and precise so that all parties concerned have an accurate understanding of their limitations?"	Pertial Procedures - Memo #10 - C-KAdocx	R0SS-003326198-R0SS-003336199	Condensed, SA	0.82	0 1	0 1	0 1	1 1	1

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536	Board of Commissioners of the South East Louisiana Flood Protection District v. United States, 2015 U.S. 1808 (2015), 135 S.Ct. 1461, 140 L.Ed.2d 118 (2014). And the federal employment law proposed by Virgin, the FLSA, explicitly contemplates that state wage and hour laws like California's will apply concurrently with federal law. 29 U.S.C. *218. The only conflicting authority that Virgin presents is a single footnote in a single, non-controlling district court case from the Northern District of Illinois. See <i>Harris v. Skywest, Inc.</i> , No. 15-CV-02036, 2016 WL 2986976, at *10, n. 14 (N.D. Ill. July 24, 2016). The Court does not find the case persuasive.	15+4	As the fifth Circuit recently explained in <i>BREEFWATER HORIZON</i> , "[c]ourts typically assess jurisdiction under this provision in terms of whether (1) the activities that caused the injury constituted an 'operation' or 'production' of minerals, and (2) the case 'arises out of or in connection with' the 'operation.' With respect to the first prong of this analysis, although OCCSA itself does not define 'operation,' the fifth Circuit has stated that operation is 'the doing of some physical act.' 'Exploration, development, or production' respectively refer to 'the processes involved in searching for minerals on the OCS; preparing to remove the minerals and transferring them to shore.' The second prong of the jurisdictional test 'require[s] only a 'but for' connection'' that is, a court must evaluate whether but for the operation would the case have arisen. <i>BREEFWATER HORIZON</i> clarified that there is no situs requirement for jurisdiction under OCCSA, explaining '[]because federal jurisdiction exists for cases 'arising out of or in connection with' OCS operations, 43 U.S.C. § 1333(c)(1), it is not necessary to determine whether the situs of the injury occurred in the OCS.' <i>BREEFWATER HORIZON</i> thus states a situs requirement 'conflicts with this court's fault-for test'.	In determining whether the activities that caused an injury constituted an operation conducted on the Outer Continental Shelf (OCS) that involved the exploration and production of minerals, as required for jurisdiction under the Outer Continental Shelf (OCS) Act, the court considers whether the incident involved the doing of some physical act such as searching for minerals on the OCS, preparing to extract them by, inter alia, drilling wells and constructing platforms, and removing the minerals and transferring them to shore. Outer Continental Shelf Lands Act, § 23(b)(1), 48 U.S.C.A. § 1349(b)(1).	How is jurisdiction assessed under The Outer Continental Shelf Lands Act?	Admiralty Law - Memo -MS.docx	ROSS-0031485916-ROSS-003285938	Condensed, SA	0.57	839	15_344	14,873	21,876	9,029
537	<i>Sundborg Maritime, Ltd. v. PH, 212 F. Supp. 3d 618</i>	22+281	As outlined earlier, to succeed on a salvage claim, pursuant to the general maritime law, a claimant must establish that (1) the property was imperiled, (2) voluntary service was rendered when required as an existing duty or from a special contract, and (3) the salvage attempt succeeded in whole or in part, or contributed to the success of the operation. Whether a marine peril exists is a question of fact. The peril necessary to constitute a salvage service need not be one of imminent and absolute danger; the danger must simply be present or "reasonably to be apprehended." The burden of proof that the vessel or property was imperiled rests on the claimant. <i>Volturnines</i> is also ordinarily an issue of fact. Here, PH does not dispute the success of the operation, the third element of a salvage claim.	(Under the Convention on Salvage and general maritime law, to succeed on a salvage claim pursuant to the general maritime law?)	What elements must a plaintiff prove to succeed on a salvage claim pursuant to the general maritime law?	Admiralty Law - Memo -S.S.docx	ROSS-00314445-ROSS-003314436	SA, Sub	0.56	0	0	1	1	
538	<i>Ballard v. Shieh, 628 P.2d 918</i>	15A+1703	Second, any claim that former Rule 45 does not apply because the school board was not acting as an "administrative agency" is without merit. As the fifth Circuit explained in <i>Wingspinner</i> , "the school board was acting as an 'administrative agency' is functional. Whenever an entity which 'normally acts as a legislative body applies policy to particular persons in their private capacities, instead of passing on general policy or the rights of individuals in the abstract, it is functioning as an administrative agency within the meaning of Appellate Rule 45.' <i>Wingspinner</i> , 334 F.2d at 344-45. See also <i>Kerner v. City of Anchorage</i> , 508 F.2d 1101, 1104 (9th Cir. 1975) (affirming the application of former Rule 45 to a school board hearing and decision on the nonretention of a teacher). <i>Jernell</i> , 567 P.2d at 762, 765-67.	Is an entity which normally acts as a legislative body applying policy to particular persons in their private capacities, instead of passing on general policy or the rights of individuals in the abstract, it is functioning as an "administrative agency" within meaning of former Appellate rule providing that appeals from administrative agencies must be filed within 30 days after appellant is informed of agency's action. Rules of Appellate Procedure, Rule 45(a)(2)(Renumbered Rule 60(a)(2)).	Is an entity which normally acts as a legislative body functioning as an administrative agency when applying policy to particular persons in their private capacity?	000361.docx	LEGALCASE-00117399-LEGALCASE-00117399	SA, Sub	0.4	0	0	1	1	
539	<i>Friedl vs. Walpole Tire Serv., 37 So.3d 649</i>	313A+111	To maintain a successful products liability action under the Louisiana Products Liability Act ("PLA"), a plaintiff must establish four elements: (1) that the defendant is a manufacturer of the product; (2) that the plaintiff is a consumer of the product; (3) that the product is "reasonably dangerous"; and (4) that the claimant's damage arose from a reasonably anticipated use of the product by the claimant or someone else. <i>LSA 9:2800.54(A)</i> .	To maintain a successful products liability action under the Louisiana Product Liability Act (PLA), a plaintiff must establish four elements: (1) that the defendant is a manufacturer of the product; (2) that the plaintiff is a consumer of the product; (3) that the product is "reasonably dangerous"; and (4) that the claimant's damage arose from a reasonably anticipated use of the product by the claimant or someone else. LSA 9:2800.54(A).	What must a plaintiff establish to maintain a successful action under the Product Liability Act (PLA)?	000634.docx	LEGALCASE-00117872-LEGALCASE-00117873	Condensed, SA	0.01	0	1	0	1	
540	<i>Bennett v. Virgin Am., 227 F. Supp. 3d 1049</i>	23 H+8	The Court rejects Virgin's argument that California wages and hour law cannot apply to flight attendants under the FAA's 40103B, but the FAA has already rejected Virgin's argument for FAA preemption. Although the federal government has exclusive sovereignty over the United States airspace and aviation safety, "Congress has not occupied the field of employment law in the aviation context and... the FAA does not confer upon the agency the exclusive power to regulate all employment matters involving airline workers." <i>Wingard v. Delta Air Lines, Inc.</i> , 579 F.3d 976 (9th Cir., 2019), <i>cert. denied</i> , 139 S.Ct. 1461, 140 L.Ed.2d 118 (2024). And the federal employment law proposed by Virgin, the FLSA, explicitly contemplates that state wage and hour laws like California's will apply concurrently with federal law. 29 U.S.C. *218. The only conflicting authority that Virgin presents is a single footnote in a single, non-controlling district court case from the Northern District of Illinois. See <i>Harris v. Skywest, Inc.</i> , No. 15-CV-02036, 2016 WL 2986976, at *10, n. 14 (N.D. Ill. July 24, 2016). The Court does not find the case persuasive.	Although the federal government has exclusive sovereignty over the field of employment law in the aviation context, Congress has not occupied the field of employment law in the aviation context and... the FAA does not confer upon the agency the exclusive power to regulate all employment matters involving airline workers. Wingard v. Delta Air Lines, Inc., 579 F.3d 976 (9th Cir., 2019), cert. denied, 139 S.Ct. 1461, 140 L.Ed.2d 118 (2024). And the federal employment law proposed by Virgin, the FLSA, explicitly contemplates that state wage and hour laws like California's will apply concurrently with federal law. 29 U.S.C. *218. The only conflicting authority that Virgin presents is a single footnote in a single, non-controlling district court case from the Northern District of Illinois. See Harris v. Skywest, Inc., No. 15-CV-02036, 2016 WL 2986976, at *10, n. 14 (N.D. Ill. July 24, 2016). The Court does not find the case persuasive.	Does the Federal Aviation Act (FAA) confer upon the agency exclusive power to regulate all employment matters involving aircraft?	Labor and Employment - Memo 39 - vP.docx	ROSS-003285938-ROSS-003285949	SA, Sub	0.73	0	0	1	1	
541	<i>In re Tribune Media Co., 552 B.R. 282</i>	92-2162	The third element of a defamation claim "a plaintiff may be based either on negligence or constitutional malice, which is sometimes called 'actual malice.' The standard of fault used to review a defamation claim varies according to whether the plaintiff is a public official or public figure, or a private individual because 'beyond the speech of public concern and the plaintiff is a public official or public figure, the Constitution clearly requires the plaintiff to surmount a much higher barrier before recovering damages from a media defendant than is necessary to prove with a private plaintiff.'" Because Mr. Henke's status affects the standard by which he must prove his claims and the type of damages he may pursue, it is appropriate to discuss the third element at the outset.	Standard of fault used to review a defamation claim under Maryland law varies according to the plaintiff's status as a public figure, limited public figure, or a private individual, because when the speech is of public concern and the plaintiff is a public official or public figure, the Constitution clearly requires the plaintiff to surmount a much higher barrier before recovering damages from a media defendant than is necessary to prove with a private plaintiff. U.S.C.A. Const Amend. 1.	Does the standard of fault in a defamation claim depend on the plaintiff's private or public status?	003336.docx	LEGALCASE-00120611-LEGALCASE-00120612	SA, Sub	0.37	0	0	1	1	

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Between Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
542	Bacon v. Towne, 58 Mass. 217	2439-58[1]	Since the abolition of special pleading, the defendant in an action for tort may give evidence of facts which tend to prove the plaintiff guilty of the tort, and to show that the tort was not the probable cause, and in mitigation of damages, although he is not prepared with evidence to show that these facts were known to him at the time of the complaint against the plaintiff.	Since the abolition of special pleading, the defendant, in an action for tort, may give evidence of facts which tend to prove the plaintiff guilty of the tort, and to show that the tort was not the probable cause, and in mitigation of damages, although he is not prepared with evidence to show that these facts were known to him at the time of the complaint against the plaintiff.	Can a defendant prove facts tending to mitigate damages in an action for malicious prosecution?	05602.docx	LEGALISE-00084263-LEGALISE-00084264	Condensed, SA, Sub 0	839 0	1	15,344 1	14,873 1	21,876 1	9,079 1
543	In re Fleming, 55, 378 B.R. 893	3664-1	Under California's decisional law of equitable subrogation, one who claims to be equitably subrogated to the rights of a secured creditor must satisfy certain prerequisites: (1) payment must have been made by the claimant; (2) the claimant must be a party to the transaction giving rise to the debt; (3) the debt paid must be one for which the subrogee acted as a volunteer or intruder; (4) the entire debt must have been paid; and (5) subrogation must not work any injustice to the rights of others.	Under California's decisional law of equitable subrogation, one who claims to be equitably subrogated to the rights of a secured creditor must satisfy certain prerequisites: (1) payment must have been made by the claimant; (2) the claimant must be a party to the transaction giving rise to the debt; (3) the debt paid must be one for which the subrogee acted as a volunteer or intruder; (4) the entire debt must have been paid; and (5) subrogation must not work any injustice to the rights of others.	What prerequisites must one who claims to be equitably subrogated to the rights of a secured creditor satisfy?	ROSS-00288593-ROSS-00329894	ROSS-00288593-ROSS-00329894	Condensed, SA	0.03	0	1	0	1	
544	Westport Ins. v. St. Paul Fire & Marine Ins. Co., 375 F. Supp. 2d 4	3664-1	Equitable subrogation is the mode which equity adopts to compel the ultimate payment of a debt by one who, in justice, equity, and good conscience, should pay it; this doctrine is broad enough to encompass a situation in which a party, acting as a volunteer or intruder, pays a debt for which another is primarily liable, and which is equity and good conscience should have been discharged by the latter.	Under Connecticut law, equitable subrogation is the mode which equity adopts to compel the ultimate payment of a debt by one who, in justice, equity, and good conscience, should pay it; this doctrine is broad enough to encompass a situation in which a party, acting as a volunteer or intruder, pays a debt for which another is primarily liable, and which is equity and good conscience should have been discharged by the latter.	Does the doctrine of subrogation include every instance in which one person not acting voluntarily, has paid a debt for which another was primarily liable and which in equity and good conscience should have been discharged by the latter?	ROSS-00282215-ROSS-00328216	ROSS-00282215-ROSS-00328216	SA, Sub	0.71	0	0	1	1	
545	St. Paul Mercury Ins. Co. v. 2173-551[83] Frontier Pac. Ins. Co., 111 Cal.App. 4th 1234		"One insurer has no right of contribution from another insurer with respect to its payment on an obligation for which it was primarily responsible, and as to which the liability of the second insurer was only contributory." "The aim of equitable subrogation is to place the burden for a loss on the party ultimately liable or responsible for it and by whom it should have been discharged, and to relieve entirely the insured of the loss and who in equity was not primarily liable therefor."	In contrast to equitable contribution, the aim of equitable subrogation is to place the burden for a loss on the party ultimately liable or responsible for it and by whom it should have been discharged, and to relieve entirely the insured of the loss and who in equity was not primarily liable therefor.	% the aim of equitable subrogation to place the burden for loss on the party ultimately responsible for it and by whom it should have been discharged, and to relieve entirely the insured of the loss and who in equity was not primarily liable for it?	Subrogation - Memo 1 563 - C-71.docx	ROSS-00288419-ROSS-00328840	Condensed, SA	0.48	0	1	0	1	
546	Cruckshank v. Clean Seas Co., 348 B.R. 371	3665-26	Moreover, the plaintiffs have not established a legal basis for their claim. The plaintiffs' claim is based on the theory that the defendant, who warranty claims they have paid, "subrogation is a legal term, rooted in equity," which today is used to mean "stand in the shoes of," Nat'l Shawmut Bank of Boston v. New Amsterdam Cas. Co., Inc., 411 F.2d 843, 844 (1st Cir.1969). "The equitable principle is that when one, pursuant to obligation, not a volunteer, fulfills the duties of another, he is entitled to assert the rights of that other against third persons." Id. See also City of Cambridge v. Henscom, 386 Mass. 54, 56-57, 70 N.E. 1030, 833 (1994) (Henscom's payment of the defendant's debt for the benefit of the defendants, "Rights of subrogation, although growing out of a contractual setting and of times articulated by the contract, do not depend for their existence on a grant in the contract, but are created by law to avoid injustice." Carter v. Schlager, 358 Mass. 789, 792, 267 N.E.2d 492, 494 (1971). It "covers only those situations where one party pays a debt for which another party is primarily liable." A.N. Dieringer, Inc. (D.Mass.1974).	Equitable principle behind "subrogation," an old term coded in equity law, is that one who, pursuant to obligation, and not a volunteer, fulfills the duties of another, he is entitled to assert the rights of that other against third persons.	Does the equitable principle behind "subrogation" is that one who, pursuant to obligation, and not a volunteer, fulfills the duties of another, he is entitled to assert the rights of that other against third persons?"	043955.docx	LEGALISE-00121191-LEGALISE-00121191	Condensed, SA, Sub 0.77	0	1	1	1	1	
547	Dawson v. Higgins, 197 A.L.J. 2d 127	1488-235	Plaintiffs also claim a regulatory taking. Concededly, certain governmental action affecting private property may constitute a taking even if it does not result in the physical occupation of the property. (See City of Escondido, supra 503 U.S. at ____; 112 S.Ct. at 1526.) Courts, however, have reserved such a regulatory taking as a question of federal law. To constitute a regulatory taking the challenging actions must be such that they fall substantially to advance a legitimate state interest or deprive the owner of the economically viable use of his property. (See, Seawall Assocs. v. City of New York, supra, 74 N.Y.2d at 1107; 544 N.Y.2d 542, 543 N.E.2d 1059; Nolan v. California Coastal Comm., supra, 483 U.S. at 834, 107 S.Ct. at 3147; Keystone Blumhouse Coal Assn. v. Delmonico, supra, 480 U.S. at 485, 107 S.Ct. at 3241.) The property owner, however, has the burden of proving the presumption of constitutionality that attaches to the regulation and of proving every element of his claim beyond a reasonable doubt." (Id. St. Aubin v. Finkle, 68 N.Y.2d 66; 76, 505 N.Y.2d 859; 496 N.E.2d 879.) Plaintiffs have failed to meet this burden.	Property owner who challenges government action as regulatory taking bears heavy burden of overcoming presumption of constitutionality that attaches to regulation and of proving every element of his claim beyond a reasonable doubt. U.S.C.A. Const.Amend. 5, 14, McKinney's Const. Art. 1, § 6, 7 (d).	Does a property owner asserting a takings claim bear the burden of overcoming the presumption of constitutionality that attaches to the regulation and of proving every element of his claim beyond a reasonable doubt?	017422.docx	LEGALISE-00121884-LEGALISE-00121885	SA, Sub	0.77	0	1	1	1	

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548	State v. Grubb, 28 Ohio St. 3d 199	110-632(4)	Thus, a motion in limine, if granted, is a tentative, interlocutory, pre-auditory ruling by the trial court reflecting its anticipatory treatment of the evidentiary issue. In virtually all circumstances finality does not attach when the motion is granted. Therefore, should circumstances subsequently develop at trial, the trial court is certainly at liberty to reconsider its ruling on the motion in limine in the actual context." State v. White (1982), 5 Ohio App.3d 1, at 4, 451 N.E.2d 533.	"Motion in limine." If granted, is tentative, interlocutory, pre-auditory ruling by trial court reflecting its anticipatory treatment of an evidentiary issue; in virtually all circumstances, finality does not attach when motion is granted; so that, should circumstances subsequently develop at trial, trial court is at liberty to consider admissibility of disputed evidence in its actual context.	"Does a ruling on a motion in limine reflect the court's anticipated treatment of an evidentiary issue at trial, and is a tentative, interlocutory ruling which the trial court is at liberty to change at trial?"	Preltrial Procedure - Memo #173 - C-ORB.docx	ROSS-003298154-ROSS-003298155	Condensed, SA	0.2	839	15,344	14,873	21,876	3029
549	Hawker v. State, 931 So. 2d 945	307A-3	In light of the relevance of Hawker's admission to Robison's evolution and recommendation, we reject Hawker's contention that the trial court abused its discretion by reversing its motion in limine ruling excluding the admission. See <i>McIntire v. State</i> , 798 So.2d 870, 874 (Fla. 4th DCA 2001) (affirming the trial court's ruling on a motion in limine to exclude a confession). See <i>McIntire v. State</i> , 798 So.2d 793 (Fla. 4th DCA 1997). However, a trial court's discretion is limited by the rules of evidence. See <i>Taylor v. State</i> , 601 So.2d 1304, 1305 (Fla. 4th DCA 1997). It is well-settled that motion in limine rulings are subject to change during trial as the trial court develops an understanding of the facts and circumstances of the case. See <i>Dorley v. State</i> , 694 So.2d 343, 350 (Fla. 4th DCA 1997). <i>State v. Zeno</i> , 614 So.2d 1390 (Fla. 4th DCA 1993). Such a ruling may be based on an incomplete oral proffer or on the trial court's limited understanding of the issues in the case, not having heard the first bit of evidence. The shifting sands of the trial in progress may cause a judge to rethink an earlier evidentiary ruling based on a maturing understanding of the case. See <i>Blackburn v. State</i> , 314 So.2d 634, 641 (Fla. 4th DCA 1975). "In the case at bar, once Robison was called upon to testify, the trial court was required to consider the evidence and the representations and arguments made during the motion in limine hearing. Hawker's admission to engaging in sexual intercourse with JD, after he turned sixteen was relevant to Robison's determination that Hawker satisfied the requirements for Jimmy Rice Act civil commitment. Consequently, the trial court did not abuse its discretion by reversing its motion in limine ruling, as such was not carved in stone, based upon its limited understanding of the relevance of Hawker's admission to Robison's conclusion.	Motion in limine rulings are subject to change during trial as the trial court develops an understanding of the facts and circumstances of the case; such a ruling may be based on an incomplete oral proffer or on the trial court's limited understanding of the issues in the case, not having heard the first bit of evidence. West's 13 SA, 1334-1330 4/16/04.	"Can a motion in limine be based on an incomplete oral proffer or on the trial court's limited understanding of the issues in the case, not having heard the first bit of evidence?"	024157.docx	LEGALASE-00122033-LEGALASE-00122034	Condensed, SA	0.82	0	1	0	1	
550	Am. v. Fed. Republic of Nigeria, 238 F. Supp. 3d 17	22-1342	"When two governments deal directly with each other as governments," they act in a distinct sovereign capacity "even when, as here, the subject matter of the conversation might have some connection to commercial activity." See <i>Cicippio</i> , 30 F.3d at 168. And even when it is not directed solely to another government, official speech that gives "voice to the foreign government" speaking from within its own territory may be valid. 11 (statement posted on the website of Kazakhstan's Embassy to the United States, "with the active support of the Kazakh Ambassador" is an act of state); <i>Riggs</i> , 163 F.3d at 1368 (letter representing a decree by the Brazilian Minister of Finance is an act of state). This case fits squarely within those precedents. The 2014 letter that is the gravamen of Nwaka's complaint is an official communication from the Nigerian government to the United States, and it is not directed to the United States. It is an act of the Nigerian state in an asset forfeiture case instituted by the U.S. government. As a distinctly sovereign act performed within Nigeria (even if it had effects elsewhere), the communication is subject to the act of state doctrine. Applying that doctrine here, in the process of deciding this case the Court will "deem valid" and lawful Nigeria's communication with the U.S. government concerning Nwaka's (lack of) authority. See <i>World Wide</i> , 236 F.3d at 1165.	Even when it is not directed solely to another government, official speech that gives voice to the foreign government speaking from within its own territory may constitute an act of state that district court would deem valid under act of state doctrine.	"Even when it is not directed solely to another government, does official speech that gives voice to the foreign government speaking from within its own territory constitute an act of state that the district court would deem valid under act of state doctrine?"	019703.docx	LEGALASE-00123727-LEGALASE-00123728	SA, Sub	0.83	0	0	1	1	
551	Geophysical Serv. v. TGS-NOPEC Geophysical Co., 850 F.3d 785	22-1342	The act of state doctrine "limits, for prudential rather than jurisdictional reasons, the adjudication in American courts of the validity of 'foreign sovereign' public acts." The doctrine applied to bar an action when "the United States is to be deemed the official act of a foreign government performed within its own territory." Those's seemingly international character, the doctrine is founded in concerns of domestic separation of powers, "reflecting the strong sense of the Judicial Branch that its engagement in the task of passing on the validity of foreign acts of state may hinder the conduct of foreign affairs." "Act of state issues only arise when a court must decide that is, when the outcome of the case turns on the validity of a public act of a foreign government." "Even if the defendant is a private party, not an instrumentality of a foreign state, and even if the suit is not based specifically on a sovereign act."	"Act of state doctrine" limits, for prudential rather than jurisdictional reasons, the adjudication in American courts of the validity of a foreign sovereign's public acts, and thus the doctrine applies to bar an action when the United States is to be deemed the official act of a foreign sovereign performed within its own territory, but the doctrine can apply even if the defendant is a private party, not an instrumentality of a foreign state, and even if the suit is not based specifically on a sovereign act.	Does the act of state doctrine apply whenever the relief sought or the defense interposed would require a court in the United States to declare invalid the official act of a foreign sovereign?	International Law - Memo # 79 - C-UK.docx	ROSS-003283671-ROSS-003283672	Condensed, SA	0.42	0	1	0	1	

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	Walker v. Republic of the Philippines, 965 F.2d 1375	22+342	The act of state doctrine serves to enhance the ability of the Executive Branch to engage in the conduct of foreign relations by preventing courts from judging foreign public acts. Banco Nacional de Cuba v. Sabbatino, 376 U.S. 308, 423, 11 L. Ed.2d 804 (1964). When determining whether the act of state doctrine is applicable to a particular case, courts have identified three factors: (1) whether the act is a public act of a foreign government; (2) whether the act is a public act of a foreign government; and (3) whether the act is a public act of a foreign government. "Not [t]o any governmental acts whose validity would be called into question by adjudication of the suit." Callego, 764 F.2d at 1113. The defendants assert that the act of state doctrine applies because resolution of this suit will call into question the Philippine government's grant of power to the PCGG to sequester and sell assets, the PCGG's official acts of sequestering and selling the Falcon, the Philippines Supreme Court decision that the PCGG had no authority to sell the Falcon, and the PCGG's decision that the Falcon was not a state-owned vessel. This is determined, and various other official acts. Furthermore, the defendants argue that, even if there is an exception to the act of state doctrine for the repudiation of commercial obligations, it is inapplicable here because the PCGG's commercial acts were traceable to sovereign acts.	When determining whether an act of state doctrine limits adjudication in American courts, Court of Appeals looks not only to acts of named defendants, but to any governmental acts whose validity would be called into question by adjudication of the suit.	"When determining whether an act of state doctrine limits adjudication in American courts, does the Court of Appeals look not only to acts of named defendants, but to any governmental acts whose validity would be called into question by adjudication of the suit?"	013607.docx	LEGALISE-00124104-LEGALISE-00124106	SA, Sub	0.81	0	15,344	14,873	21,876	9,029	
552															
	Animal Sci. Prod. v. China Nat. Metals & Minerals Imp. & Exp. Corp., 702 F. Supp. 2d 1320	22+342	The bulk of the parties' objection-related argument focus on the act of state doctrine, even though the doctrine is facially inapplicable to the case at bar. As noted supra, the doctrine is, effectively, an inquiry into a consequence of domestic separation of powers." W.S. Kirkpatrick, 493 U.S. at 404, 110 S.Ct. 701 (1990); Sabbatino, 376 U.S. 308, 84 S.Ct. 923, and it directs the court to "dismiss the suit if its resolution would require the court to declare invalid an official act of a foreign sovereign." Gross, 456 F.3d 963. Although the law is unsettled as to whether the doctrine is inapplicable to the State's export controls and foreign state-owned enterprise (SOE) "trade policies," such as 100% state-owned SOEs, it might be deemed a "foreign sovereign" for the purposes of the doctrine). It is well settled that the doctrine envisions a "commercial activity" exception, pursuant to which abstention is unwarranted as to the acts committed by foreign sovereigns in course of commercial operations. See Alfred Dunhill, 425 U.S. at 703; 706, 96 S.Ct. 1854; Williams, 694 F.2d at 307-310 and n.2; see also Chicago Petroleum, 712 F.2d 404, 408. Hence, in no ambiguous terms, the doctrine mandates the defendant to make a showing that the doctrine is applicable to the case at bar. The court's sovereign qualities of its activity being challenged and allow no cross-matching. See, e.g., Callego, 764 F.2d at 1114-1115. Here, however, Defendants try to do exactly that: they match themselves with the regulatory activities of the MOFCOM and CCCC. See M/Mot. at 36; S/Mot. at 31-32; S/Reply at 12-12.2; M/Reply at 11-15. Specifically, Defendants' position can be reduced to the following chain of sentiments: (a) the Chinese government, operating through the MOFCOM and CCCC, is a foreign sovereign; (b) the court of the United States is not a court of a foreign-based power; (c) Defendants must therefore comply with such governmental regulations and measures; and (d) Justice	The act of state doctrine is an inquiry into a consequence of domestic separation of powers, and it directs the court to dismiss the suit if its resolution would require the court to declare invalid an official act of a foreign sovereign.	"The act of state doctrine is an inquiry into a consequence of domestic separation of powers, and it directs the court to dismiss the suit if its resolution would require the court to declare invalid an official act of a foreign sovereign?"	International Law - Memo # 208 - C - MLS.docx	ROSS-0031148-R055-003314889	Confirmed, SA	0.89	0	1	0	1	1	1
553															
	In re Estate of Ferdinand E. Marcos Human Rights Litig., 978 F.2d 493	1708+1297	The "Arising Under" Clause of Article II is construed differently, and more broadly, than the "arising under" requirement for federal question jurisdiction under 28 U.S.C. § 1331. See Verdine, 461 U.S. at 495, 103 S.Ct. at 1972-73. "Arising under" jurisdiction is broader than federal question jurisdiction under "1331"; it "[i]ncludes many limitations which would be excluded by the narrower confines of the federal question jurisdiction." (quoting Romero v. International Terminal Operating Co., 358 U.S. 354, 379 n. 51, 79 S.Ct. 468, 484 n. 51, 3 L.Ed.2d 388 (1959)); cf. Brannon v. Babcock & Wilcox Co., 10 F.3d 1011 (9th Cir. 1993) (concluding that "arising under" jurisdiction is broader than federal question jurisdiction). (discussing differences between constitutional and statutory grants of "arising under" jurisdiction), cert. denied, 503 U.S. 906, 112 S.Ct. 1262, 117 L. Ed.2d 49 (1992). There is ample indication that the "arising under" clause of Article III is broader than the "arising under" clause of Article II. See, e.g., Verdine, 461 U.S. at 495, 103 S.Ct. at 1972-73. Letter from James Madison to Edmund Randolph (April 8, 1797), reprinted in 9 The Papers of James Madison 368, 370 (R. Rutland & W. Rachal ed. 1975), and "all occasions of having disputes with foreign powers." 3 The Debates in the Several State Conventions on the Adoption of the federal Constitution 530 (J. Elliot ed. 1836) (remarks of J. Madison); and, as Alexander Hamilton wrote, to "all those [cases] in which the national interest may require the interposition of the national authority." 1 The Papers of Alexander Hamilton 586 (C. Ross et al. eds. 1965). It is also well settled that the federal government is part of federal common law. See The Paquete Habana, 175 U.S. 677, 700, 20 S.Ct. 290, 295, 44 L. Ed. 320 (1900) ("International law is part of our law, and must be ascertained and administered by the courts of	"For a court to determine whether a plaintiff has claim for tort committed in violation of international law, under the Alien Tort Claims Act, should it first decide whether there is applicable norm of international law, whether it is recognized by United States, what its status is and whether it was violated in particular case U.S.C.A. Const. Art. 3, § 2, cl. 1; 28 U.S.C.A. § 1350.	"For a court to determine whether a plaintiff has claim for tort committed in violation of international law, under the Alien Tort Claims Act, should it first decide whether there is applicable norm of international law, and then whether it was violated in the particular case?"	International Law - Memo # 193 - C - TL.docx	ROSS-003283361-R055-003283363	SA, Sub	0.86	0	0	1	1	1	
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559	Kalamazoo Spice Extraction Co. v. Provisional Military Gov't of Ethiopia, 729 F.2d 422	221+342	The act of state doctrine is an exception to the general rule that a court of the United States, where appropriate jurisdictional standards are met, will decide cases before it by choosing the rules appropriate for decision or action in the foreign country. National City Bank v. Banco Nacional de Cuba, 400 U.S. 759, 763, 92 S.Ct. 1808, 1811, 32 L.Ed.2d 466 (1973). The roots of the doctrine can be traced to Underhill v. Hernandez, 188 U.S. 250, 185 Ct. 48, 42 L.Ed. 458 (1897) where the Supreme Court held every sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another country within its jurisdiction. The act of state doctrine is a principle of international law, and its application to domestic cases must be obtained through means open to be availed of by sovereign powers as between themselves.	Act of state doctrine is exception to general rule that court of United States, where appropriate jurisdictional standards are met, will decide cases before it by choosing rules appropriate for decision from among various sources of law, including international law.	Is the act of state doctrine an exception to the general rule that courts of the United States will decide cases before it by choosing rules appropriate for decision from among various sources of law?	International Law - Memo # 534 - C - K1.docx	ROSS-003283857-ROSS-003283458	Condensed, SA	0.71	839	15,344	34,873	21,876	9,029
	Yeary v. Bell, 228 Ga. App. 522	307A+1	On appeal an appellate court must construe the evidence most strongly to support the verdict and judgment. Dept. of Transp. v. Hillside Motors, 139 Ga. 697, 65(2), 85 S.Ct. 463, and every presumption and inference in favor of the jury will be applied. The evidence must be reasonably drawn. See generally Worm v. Sea Goldfishes, 135 Ga. App. 25(93), 217 S.E.2d 425 and progeny. Moreover, "[i]n preliminary hearing of defenses of lack of jurisdiction over the person, [i]mproper service, and [i]mproper venue whether made in a pleading or by motion may be heard and determined by the trial court before trial on the application of any party. [C]laims such as hearing fact issues shall be determined by the trial court." 135 Ga. App. 25(99), 217 S.E.2d 425. The burden of proof of improper service, as timely raised in appellate answer, "the court was the trier of fact. In the absence of legal error, an appellate court is without jurisdiction to interfere with a verdict supported by some evidence." Id. at 676, 285 S.E.2d 51; compare Daughtry v. Chisner-Bush Irrigation, 166 Ga. App. 708, 305 S.E.2d 439.	Preliminary hearing of defenses of lack of jurisdiction over person, improper service, and improper venue whether made in pleading or by motion may be heard and determined by court before trial on application of any party, and in each hearing factual issues shall be determined by trial court.	"Can a preliminary hearing of defenses of lack of jurisdiction over person, improper service, and improper venue whether made in pleading or by motion be heard and determined by court before trial on application of any party?"	Preliminary Procedure - Memo # 481 - C - HAM.docx	ROSS-003287217-ROSS-003287218	Condensed, SA	0.74	0	1	0	1	1
560														
	Almore v. Sarro, 87 N.J. 99	307A+1	To determine whether a particular wrongful death claim fits within this exception, the trial court must conduct a pre-trial hearing similar to the "discovery rule" hearing described in Lopez v. Swyer, supra. The first purpose of the hearing will be to determine whether the true extent of the injuries could have been discovered before the earlier action if the decedent had exercised reasonable diligence and intelligence in the investigation of the facts and circumstances of the injury. The inquiry is for further consideration those facts and circumstances which the injuries causing death were so unexpected that the decedent could not reasonably have claimed sufficient damages himself. "Discovery rule" concepts will be relevant in this inquiry. See, e.g., Lynch v. Rabasky, supra. The burden of proof will be on the plaintiff to show by a preponderance of the evidence at the hearing that the true extent of the injuries was not reasonably discoverable earlier. If plaintiff satisfies this burden, the trial court must conduct a hearing to determine the true extent of damages plaintiff may pursue in the wrongful death action. In addition to those elements that present no danger of double liability, such as funeral expenses, the plaintiff may seek those elements of damages which were clearly not awarded in the earlier action and which were not reasonably discoverable by the decedent. Again, the burden of proof will be on the plaintiff to demonstrate such damages by a preponderance of the evidence.	To determine whether wrongful death plaintiff may pursue elements of damages that technically could have been but in fact were not recovered in earlier action, trial court must conduct a pre-trial hearing to determine whether the true extent of the injuries could have been discovered before decedent's own personal injury action if the decedent had exercised reasonable diligence and intelligence in investigating the original injuries and circumstances of the injury. The inquiry is for further consideration those facts and circumstances which the injuries causing death were so unexpected that the decedent could not reasonably have claimed sufficient damages himself. "Discovery rule" concepts will be relevant in this inquiry. See, e.g., Lynch v. Rabasky, supra. The burden of proof will be on the plaintiff to show by a preponderance of the evidence at the hearing that the true extent of the injuries was not reasonably discoverable earlier and to demonstrate such damages by a preponderance of the evidence.	Should the trial court conduct a pre-trial hearing to determine whether the true extent of the injuries could have been discovered before a prior action if the decedent had exercised reasonable diligence and intelligence in investigating the original injuries?	Preliminary Procedure - Memo # 480 - C - UK.docx	ROSS-003329801-ROSS-003329802	Condensed, SA, Sub (2/4)	0	1	1	1	1	1
561														
	Totten v. United States, 92 U.S. 105	34+1	We have no difficulty at the authority of the President in the matter. He was undoubtedly authorized during the war, as commander-in-chief of the armies of the United States, to employ secret agents to enter the rebel lines and obtain information respecting the strength, resources, and movements of the enemy. It was his duty to employ such agents so far as finding upon the government as to render it lawful for the President to direct payment of the amount stipulated out of the contingent fund under his control. Our objection is not to the contract, but to the action upon it in the Court of Claims. The services stipulated by the contract was a secret service; the information sought was to be obtained clandestinely, and was to be communicated privately; the government was to employ secret agents to enter the rebel lines and obtain information respecting the strength, resources, and movements of the enemy. It was his duty to employ such agents so far as finding upon the government as to render it lawful for the President to direct payment of the amount stipulated out of the contingent fund under his control. Our objection is not to the contract, but to the action upon it in the Court of Claims. The services stipulated by the contract was a secret service; the information sought was to be obtained clandestinely, and was to be communicated privately; the government was to employ secret agents to enter the rebel lines and obtain information respecting the strength, resources, and movements of the enemy. It was his duty to employ such agents so far as finding upon the government as to render it lawful for the President to direct payment of the amount stipulated out of the contingent fund under his control. Our objection is not to the contract, but to the action upon it in the Court of Claims. 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563	Smith v. Lewis Miami Beach Hotel Operating Co., 35 So. 3d 101	307A-501	Florida Rule of Civil Procedure 1.420(j)(1) provides in pertinent part: Except in actions in which property has been seized or is in the custody of the court, an action may be dismissed by plaintiff without order of court (A) before trial by serving, or during trial by stating on the record, a notice of dismissal at any time before a hearing on motion for summary judgment. . . . If the notice is served after the hearing on the motion for summary judgment, the court shall determine whether the dismissal is appropriate as an adjudication on the merits when served by a plaintiff who has once dismissed in any court an action based on or including the same claim. (emphasis added). In accordance with this rule, the "party seeking affirmative relief has an almost absolute right to dismiss his entire action once without a court order by serving a notice of dismissal at any time before a hearing on a motion for summary judgment." Matrone, 894 So.2d 884 (Fla. 1st DCA, 2005).	The party seeking affirmative relief has an almost absolute right to dismiss his entire action once without a court order by serving a notice of dismissal at any time before a hearing on a motion for summary judgment. West's F.S.A. RCP Rule 1.420(j)(1).	Does the party seeking affirmative relief have a right to dismiss the entire action without a court order by serving a notice of dismissal at any time before a hearing on a motion for summary judgment?	Prelit Procedure-- Memo #956- C- 55.docx	ROS-00300139-A055-003300140	SA, Sub	0.77	0	15,344	14,873	21,876	9,029	
564	Wolf v. Scott Wetzell Servs., 113 Wash. 2d 665	413+1	This has long been recognized that the Industrial Insurance Act (IIA) (RCW Title 51) reflects a public policy compromise between employees and employers. Under the IIA, the employer pays some claims for which it would not be liable under the common law in exchange for limited liability, whereas the employee gives up common-law actions and remedies in exchange for sure and certain relief. As enacted by the legislature, the IIA accomplishes this public policy compromise through the following exclusive remedy provisions: The state of Washington, . . . overruling herein its police and sovereign power, declares that all phases of the premises are withdrawn from private controversy, and sure and certain relief for workers, injured in their work, and their families and dependents is hereby provided regardless of questions of fault and to the extent of the compensation provided in this title and to that end all civil actions and civil causes of action for such personal injuries and all jurisdiction of the courts of the state over such causes are hereby abolished, except as in this title provided. (Italics ours.) RCW 51.04.030 (part). Each worker injured in the course of his or her employment, or his or her family or dependents in case of death of the worker, shall receive compensation in his or her civil action for such personal injuries or death of the worker, and shall be entitled to such relief as shall be provided in this title, and shall have no right of action whatsoever against any person whoseover. . . . (Italics ours.) RCW 51.32.010 (part).	Under the Industrial Insurance Act, employer pays some claims for which it would not be liable under the common law in exchange for limited liability, whereas the employee gives up common-law actions and remedies in exchange for sure and certain relief. West's RCWA 51.04.030, 51.32.010.	Under the Industrial Insurance Act, does an employer pay some claims for which it would not be liable under the common law in exchange for limited liability, whereas the employee gives up common-law actions and remedies in exchange for sure and certain relief?	Workers Compensation- Memo #112 ANC.docx	LEGALEASE-00018832-LEGALEASE-00018884	SA, Sub	0.82	0	0	1	1	1	
565	City of La Crosse v. Industrial Employment Relations Comm'n, 182 Wis. 2d 15	413+1	The Workers' Compensation Act (Act) represents the legislative compromise between the interested employees, employers, the public, and the state. The Act provides for the payment of physical or mental harms arising in our industrial society. Hennings v. General Motors Assembly Division, 143 Wis.2d 11, 419 N.W.2d 551 (1988); State v. Labor & Industrial Review Comm'n, 136 Wis.2d 281, 286-87, 401 N.W.2d 585 (1987); Ankney v. Sabourin, 104 Wis.2d 309, 322, 331 N.W.2d 600 (1987).	Workers' Compensation Act represents legislative compromise between interests of employees, employers and public in resolving compensation disputes. West's WIS. 100.01 et seq.	Does the workers' compensation act represent a legislative compromise between the interests of the employees, employers and the public in resolving compensation disputes? What work-related physical or mental harms arising in industrial society?	04540.docx	LEGALEASE-00128696-LEGALEASE-00128699	SA, Sub	0.5	0	0	1	1	1	
566	Harris v. Hennings v. State, 112 A.D.3d 1213	307A-502	Supreme Court has been cited in declining to prevent the court from an action or proceeding may be discontinued. RCW 51.32.010 provides that an action or proceeding may be discontinued "upon order of the court and upon terms and conditions, as the court deems proper." While the decision to grant such an application is generally committed to the sound discretion of the trial court (see Tucker v. Tucker, 35 N.Y.2d 383, 449 N.Y.S.2d 668, 434 N.E.2d 1050 (1982)), a party cannot ordinarily be compelled to litigate and, absent special circumstances such as prejudice to the party, a party cannot be forced to litigate. Matter of Bessie v. Bessie, 434 N.Y.S.2d 1050, 434 N.E.2d 1050, 107 A.D.3d 881, 883, 969 N.Y.S.2d 671 (2013); Matter of Blum v. Blum, 48 A.D.3d 1000, 1001-1002, 852 N.Y.S.2d 454 (2008); Christenson v. Gutman, 249 A.D.2d 805, 806, 671 N.Y.S.2d 835 (1998).	While the decision to grant an application to discontinue a proceeding is generally committed to the sound discretion of the trial court, a party cannot ordinarily be compelled to litigate and, absent special circumstances such as prejudice to the party, a party cannot be forced to litigate. McKimney's CPLR 32.7(b).	While the determination to permit a plaintiff to voluntarily discontinue an action is generally within the sound discretion of the court, can a party ordinarily be compelled to litigate and, absent special circumstances, such as prejudice to the parties, discontinuance should be granted?	Prelit Procedure-- Memo #1286- C- Ry.docx	ROS-00030775-A055-003287726	Continued Order, SA	0.62	1	1	0	1	1	

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567	Ballard v. Meyers, 275 Ga. 819	307A+551	Our holding is a narrow one, as it provides only that the pretrial disclosure requirement does not extend to documentary evidence upon which a party may possibly rely exclusively for its case. Those documents that a litigant intends to rely upon affirmatively to meet the burden of proving its or her case will be disclosed in the pretrial order. Uniform Superior Court Rule 7.2(14).	The pretrial disclosure requirement does not extend to documentary evidence upon which a party may possibly rely exclusively for its case. Those documents that a litigant intends to rely upon affirmatively to meet the burden of proving its or her case will be disclosed in the pretrial order. Uniform Superior Court Rule 7.2(14).	Must those documents that a litigant intends to rely on affirmatively to meet a burden of proving its or her case be disclosed in the pretrial order?	Pretrial Procedure - Memo #1332 - C-17.docx	ROSS-00337513-10555-003327516	SA, Sub	0.82	839	15,344	14,873	21,876	9,079
567														
568	Patterson v. Lix Clubhouse, 872 So. 2d 181.	307A+717.1	Continuances are not favored, and the decision whether to grant or deny a motion for a continuance is within the discretion of the trial court. In re Vosya, 594 So. 2d 421 (Ala. Civ. App. 1986). The decision whether to grant or deny a continuance will be reversed on appeal only upon a showing of "a gross abuse" of the trial court's discretion. Autrey v. Autrey, 515 So. 2d 708, 709 (Ala. Civ. App. 1987). In order to be entitled to a continuance, the movant must show: (1) the expected evidence is material; (2) the expected evidence must be credible and will probably affect the result; (3) the evidence must not be merely cumulative or impeaching; and (4) the diligence having been exercised by the movant to secure the absent witness or evidence; (4) the expected evidence must be credible and will probably affect the result; (5) the evidence must not be merely cumulative or impeaching; and (6) that the motion for continuance is not made merely for purposes of delay.	In order to be entitled to a continuance, the movant must establish: (1) that the expected evidence will be material and competent; (2) a probability that the testimony can be obtained at a future date to which the cause may be continued or postponed; (3) due diligence having been exercised by the movant to secure the absent witness or evidence; (4) the expected evidence must be credible and will probably affect the result; (5) the evidence must not be merely cumulative or impeaching; and (6) that the motion for continuance is not made merely for purposes of delay.	"In order to be entitled to a continuance, what must a movant establish?"	026695.docx	LEGALASE-00129596-LEGALASE-00129598	SA, Sub	0.33	0	0	1	1	
569	Whitson v. New York State Dept of Corr. Servs., 57 A.D.3d 1180	371+2001	Regardless of the label placed on a charge or an assessment, "taxes are burdens of a pecuniary nature imposed for the purpose of defraying the costs of government services generally without relation to particular benefits derived by the taxpayer."	Regardless of the label placed on a charge or an assessment, "taxes" are burdens of a pecuniary nature imposed for the purpose of defraying the costs of government services generally without relation to particular benefits derived by the taxpayer.	Are taxes a burden of a pecuniary nature imposed for the purpose of defraying the costs of government services generally without relation to particular benefits derived by the taxpayer?	044729.docx	LEGALASE-00130866-LEGALASE-00130868	Condensed, SA	0.9	0	1	0	1	
570	United States v. Robinson, 665 F.3d 265	63+10	On appeal Robinson initially focused his argument on the evidence of the officers' salaries, claiming that under "666(c) evidence of bona fide salaries or wages is inadmissible to meet the \$5,000 threshold. Subsection 666(c) provides: 'This section does not apply to bona fide salaries or wages, and other compensation paid in the usual course of business.' We disagree that this provision precludes the government's use of salary evidence to establish the transactional element of the offense. Subsection 666(c) creates an exception to the federal-funds bribery statute for "bona fide" salary and other compensation paid "in the usual course of business." The phrase "[t]his section does not apply" suggests only that legitimate salary, wages, and other compensation may not be considered a bribe; not that salary evidence may not be admitted in evidence to establish the transactional element of the offense or that the bribe-taker intended to influence.	Provision of federal funds bribery statute indicating that "[t]his section does not apply to bona fide salary, wages, fees, or other compensation paid in the usual course of business" excluded from definition of bribe legitimate salary, wages, and other compensation, but did not preclude evidence of salary evidence to establish the transactional element of the offense. "transaction" that bribe-giver or bribe-taker intended to influence. 18 U.S.C.A. § 666(c).	"Can a defendant's bona fide salary, wages, fees, or other compensation paid in the usual course of business be used to establish the transactional element of the offense of bribery?"	012371.docx	LEGALASE-00132100-LEGALASE-00132101	Condensed, SA, Sub	0.53	0	1	1	1	

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571	Fidell v. Scott Truck & Tractor Co. of Louisiana, 629 So. 2d 449	307A+749.1	Inherent in the theory of pre-trial procedure are the orderly disposition of each case and of the entire docket and the avoidance of surprise. Earnes v. McKnight, 262 La. 915, 205 So.2d 220 (1972). These are sufficient reasons for allowing the trial judge to require adherence to the pre-trial order in the conduct of the trial. USA, C.C.P. art. 1551.	Inherent in theory of pretrial procedure are orderly disposition of each case and of entire docket and avoidance of surprise; these are sufficient reasons for allowing trial judge to require adherence to pretrial order in conduct of action. USA, C.C.P. art. 1551.	Is an orderly disposition of each case and avoidance of surprise inherent in theory of pretrial procedure and are they sufficient reasons for allowing trial judge to require adherence to pretrial order in conduct of action?	027259.docx	LEGALASE-00132248-LEGALASE-00132249	SA, Sub	0.21	0	0	1	21,876	9,029
572	United States v. Pascholi, 718 F.3d 1294	63+111	The statute is phrased in the disjunctive, and therefore a "666(a)(2) violation can be proven in three distinct ways: (1) either by giving, offering or agreeing to give a thing of value to any person; (2) with the corrupt intent to influence or reward an agent of an organization that receives more than \$10,000 in federal funding in any one-year period; (3) in connection with any business transaction or series of transactions that organization involving more than \$5,000. See United States v. Castro, 89 F.3d 1443, 1454 (11th Cir.1996). Moreover, although the government charged this crime in the conjunctive, the government needed to prove only one of the three charged acts. See United States v. Feltz, 579 F.3d 1341, 1344 (11th Cir.2009). Thus, if the government had charged only the agreement or proven only the date of the agreement, then the first element would have been met, and the limitations period would have run, from the date of the agreement. But if the government charged and proved all three acts, as it did, we would determine whether any one of the three acts occurred within the five years preceding the indictment. Thus, if the government had proven the act of giving, then the limitations period would have run from the date the defendant actually gave the bribe even if the agreement to bribe had occurred earlier.	A violation of federal statute proscribing theft or bribery in connection with program receiving federal funds can be proven in three distinct ways: (1) by giving, offering or agreeing to give a thing of value to any person; (2) with the corrupt intent to influence or reward an agent of any organization that receives more than \$10,000 in federal funding in any one-year period; (3) in connection with any business transaction or series of transactions of that organization involving more than \$5,000. 18 U.S.C.A. § 666(a)(2).	How should a theft or bribery in connection with program receiving federal funds be proven?	Bribery - Memo #139 - J.L.docx	R055-002877109-R055-003877170	SA, Sub	0.61	0	0	1	1	
573	Frevel v. McKoon, 222 Kan. 295	307A+749.1	The record clearly discloses that defendants were informed of all of the witnesses to be used by plaintiff well within the time limitation of March 15, 1975, prescribed by the pretrial order. We fail to see how defendants were prejudiced under such circumstances. While a pretrial order, under K.S.A. 60-218, controls the subsequent course of the action, the order is subject to the proviso "unless modified at the trial to prevent manifest injustice." We have held the proviso requires large discretionary power in the trial court. (Bartlett v. Henschke, 204 Kan. 392, 462 P.2d 763 (1970).)	A pretrial order, entered by the trial court pursuant to statute, controls subsequent course of an action unless such order is modified at the trial to prevent manifest injustice; statute imposes in trial court large discretionary powers. Rules of Civil Procedure, rule 16, K.S.A. 60-216.	"Does a pretrial order, entered by the trial court pursuant to statute, control subsequent course of an action unless such order is modified at the trial to prevent manifest injustice; statute imposes in trial court large discretionary powers?"	Pretrial Procedure-- Memo # 1836 - C-MS.docx	R055-00387277-R055-00387278	SA, Sub	0.51	0	0	1	1	
574	Burry & Son Homebuilders v. Ford, 310 S.C. 529	307A+517.1	Generally, the plaintiff is entitled to a voluntary non-suit without prejudice as a matter of right unless legal prejudice is shown by the defendant or important issues of public policy are present. Once legal prejudice is found, granting or denial is within discretion of trial court. Rules Civ. Proc., Rule 41(a)(1).	Is a plaintiff entitled to a voluntary non-suit without prejudice as a matter of right unless legal prejudice is shown by defendant or important issues of public policy are present; once legal prejudice is found, granting or denial is within discretion of trial court. Rules Civ. Proc., Rule 41(a)(1).	Is a plaintiff entitled to a voluntary non-suit without prejudice as a matter of right unless the defendant shows legal prejudice or important issues of public policy are present?	02.8575.docx	LEGALASE-00132728-LEGALASE-00132729	SA, Sub	0.62	0	0	1	1	
575	Lonnie v. Freeman, 375 Ill. App. 3d 445	97C+117	Although the parties in this case explicitly agreed that defendant would refrain from operating on the right title, the defendant's duty to refrain from doing so did not arise exclusively from the service contract. The parties' agreement in this respect was nothing more than an acknowledgment of defendant's preexisting common-law duty to refrain from altering the horse in any manner except as authorized by plaintiffs. See Rajlovich v. Alfred Mossner Co., 199 Ill.App.3d 655, 659, 145 Ill.Dec. 726, 557 N.E.2d 486, 499 (1990). "One who exercises any privilege to commit an act which would otherwise be a trespass to a chattel or a conversion is subject to liability for any harm to the chattel or to the conversion caused by dealing with it in a manner which is in excess of the privilege." Restatement (Second) of Torts § 278, at 1507 (1965). In short, "[i]f the actor exceeds the consent, it is not effective for the excess." Restatement (Second) of Torts § 892A, at 364 (1965). Contract or no contract, if one cuts, carves, lacratris, incises, or otherwise alters someone else's property except as authorized by that person, one commits a classic tort: either trespass to chattels or conversion, depending on the extent of the alteration.	Contract or no contract, if one cuts, carves, lacratris, incises, or otherwise alters someone else's property except as authorized by that person, one commits a classic tort: either trespass to chattels or conversion, depending on the extent of the alteration. Restatement (Second) of Torts §§ 278, 892A.	"Does one commit trespass to chattels if they cut, carve, lacratris, incise, or otherwise alter someone else's property?"	04.7316.docx	LEGALASE-00133316-LEGALASE-00133317	SA, Sub	0.76	0	0	1	1	
576	Maybach v. Falstaff Brewing Corp., 359 Mo. 446	302+13	"Where, from the nature of the case, the plaintiff in an action for damages for negligence could not be expected to know the exact cause of the precise negligent act which became the cause of an injury, and the facts were peculiarly within the knowledge of the defendant, the plaintiff is not required to allege the particular cause." 138 Am.Jur., p. 954, sec. 262. See also Rinaldi v. Omaha K. C. Ry., 164 Mo. 270, 64 S.W. 124, State ex rel. Rinaldi v. Omaha K. C. Ry., 164 Mo. 270, 64 S.W. 124, 100 Mo. Pleading and Practice, p. 202, sec. 107.	Where from nature of case, plaintiff in action for damages for negligence could not be expected to know exact cause of precise negligent acts which became cause of injury, and facts are peculiarly within knowledge of defendant, plaintiff is not required to allege the particular cause. V.A.M.S. § 509.300.	"Will a plaintiff be required to allege a particular cause, where from nature of case, the plaintiff in action for damages for negligence could not be expected to know exact cause of precise negligent act?"	02.3265.docx	LEGALASE-00134242-LEGALASE-00134243	SA, Sub	0.44	0	0	1	1	

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582	Brooker v. Smith, 108 So. 2d 790	307A+129	Rule concerning discovery and production of documents and rule concerning subpoena for taking depositions should be considered in part concerning discovery before another party will be required to produce documents under subpoena duces tecum. 30 F.S.A. Rules of Civil Procedure, rules 1.28, 1.34(d); Fed. Rules Civ. Proc. rules 34, 45, 28 U.S.C.A. The final question raised by plaintiff attacks that portion of the chancellor's July 1, 1998, order which, as above quoted, held Rules 1.28 and 1.34, F.R.C.P. 1954, 30 F.S.A., in pari materia and as a consequence, that a party must make the showing of good cause required by Rule 1.28 before it could be required to produce documents under subpoena duces tecum provided for in Rule 1.34, or more specifically, Rule 1.34(d).	Rule concerning discovery and production of documents and rule concerning subpoena for taking depositions should be considered in part concerning discovery before another party will be required to produce documents under subpoena duces tecum. 30 F.S.A. Rules of Civil Procedure, rules 1.28, 1.34(d); Fed. Rules Civ. Proc. rules 34, 45, 28 U.S.C.A.	"Is the proper procedure for requiring a production of documents set forth in a rule providing for discovery and production of documents, and requires showing of good cause?"	Pretrial Procedure - Memo 4100 - C- TM.docx	ROSS-00235662-7055-00359663	Condensed SA, Sub	0.51	0	1	1	21,876	9,079
	Kirrat v. State, 286 Ga. App. 650	11D+594[1]	The decision whether to grant or deny a motion for continuance lies within the trial court's sound discretion and this Court will not interfere absent abuse of that discretion. OCGA " 17-8-22; Hartley v. State, 283 Ga.App. 388, 389(1), 641 S.E.2d 607 (2007). Moreover, where a motion is made for continuance, the trial court must consider the requirements of OCGA " 17-8-25 in all cases wherein a continuance is sought upon the ground of the absence of a witness, the movant must make a showing of the requirements set forth in OCGA " 17-8-25, i.e., the witness is absent, he has been subpoenaed, he does not reside more than 100 miles from the place of trial, his testimony is material, the absence is not his fault, and he is unable to attend the trial. In such cases, the trial court must review the exercise of the trial court's discretion in denying a motion for continuance based upon the absence of a witness.	In all cases wherein a continuance is sought upon the ground of the absence of a witness, the movant must make a showing that the witness is absent, he has been subpoenaed, he does not reside more than 100 miles from the place of trial, his testimony is material, the absence is not his fault, and he is unable to attend the trial. In such cases, the trial court must review the exercise of the trial court's discretion in denying a motion for continuance based upon the absence of a witness.	"In an application for a continuance on the ground of the absence of the witness, what are the requirements to be shown by the movant?"	030881.docx	LEGAL/ASE-00136840-LEGAL/ASE-00136841	Order, SA, Sub	0.56	1	0	1	1	1
583	West v. Milner Enterprises, 152 Ga. App. 667	307A+483	"Under the provisions of Code Ann. " 81A-7-36(b), the matter contained in a request for admissions is admitted unless the party served with the request files a written answer or objection within the time specified in the request. Code Ann. " 81A-7-36(b) provides that a party who fails to file a written answer or objection within the time specified in the request is deemed to have admitted the matters set forth in the request. Code Ann. " 81A-7-36(b) further, "where a party failed to answer a request for admissions within the requisite time and the admissions removed all issues of fact, the other party was entitled to a grant of its motion for summary judgment." Moore Ventures Ltd. Partnerships v. Steck, 133 Ga.App. 215, 217, 264 S.E.2d 724 (1980); Order v. Pepsi Cola Bottlers, 442 Ga.App. 304(2), 255 S.E.2d 683 (1977); Walker Enterprises, Inc. v. Mullis, 124 Ga.App. 355(2), 383 S.E.2d 334 (1973). To avoid the conclusive effect of summary judgment, the party who failed to answer the request for admissions within the statutory period must move the court for withdrawal or amendment of the admissions in accordance with Code Ann. " 81A-7-36(b). "The court may permit withdrawal or amendment of the admission when the presentation of the merits of the action will be substantiated thereby, and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in the conduct of this action." In re Estate of Smith, 84 Ga.App. 878, 880, 235 S.E.2d 891, 893 (1977). Smith, supra 157 Ga.App. at 871, 178 S.E.2d 691.	To avoid conclusive establishment of matters contained in a request for admissions, party who has failed to answer or object to the request within the statutory period must move the court for withdrawal or amendment of the admissions. Code " 81A-7-36(b).	"To avoid conclusive establishment of matters contained in a request for admissions, must the party who has failed to answer or object to the request within the statutory period move the court for withdrawal or amendment of the admissions?"	Pretrial Procedure - Memo 4164 - C- 38.docx	ROSS-003104137-7A055-003394118	Condensed SA	0.83	0	1	0	1	
585	D'Mauro v. Metro Suburban Bus Auth., 105 A.L.2d 236	307A+718	In addition, the error in permitting the third-party plaintiffs to interpose the defective seat belt issue in the third-party action on the eve of trial was exacerbated in this case by the refusal to grant the third-party plaintiffs' motion for summary judgment. The court's decision to grant summary judgment for the third-party plaintiffs was based on the services of a seat belt expert. As Justice TIDWELL of this court aptly noted in Balogh v. H.R.B. Caterers, 88 A.D.2d 136, 141, 452 N.Y.S.2d 220: "It is an abuse of discretion to deny a continuance where the application complies with every requirement of the law and is not made merely for delay, where the evidence is material and where the need for a continuance does not result from the failure to exercise due diligence (cf. 177 C.S. Continuances, " 46; Ludan v. Riverhead Bond & Mfg. Corp., 199 App. Div. 132 (78 N.Y. App. Div. 2d 353, 354 (1978)). It is an abuse of discretion to deny a continuance where the evidence is material and where the need for a continuance does not result from the failure to exercise due diligence (cf. Canal Oil Co. v. National Oil Co., 19 Cal App 2d 524 (66 P. 2d 197))".	It is abuse of discretion to deny continuance where application complies with every requirement of law and is not made merely for delay, where evidence is material and where need for a continuance does not result from failure to exercise due diligence.	"Is it an abuse of discretion to deny continuance where an application complies with every of law and is not made merely for delay, where evidence is material and where need for a continuance does not result from failure to exercise due diligence?"	030561.docx	LEGAL/ASE-00137624-LEGAL/ASE-00137625	SA, Sub	0.76	0	0	1	1	
	Estate of Despain v. Frank Fehr Brewing Co., 900 So. 2d 637	11S+151	Parties have a substantive right "not to be subjected to a punitive damages claim and a attendant discovery of financial worth until the showing is made. The statute has been made to the trial court. If witness, or better witness, is discovered on new of trial, unless there is some reason why continuance or delay would be abuse to opposing party or court, the most that could fairly be required is that opposing party be given reasonable time in which to examine witness and make such additional preparation as may be required by information elicited from witness.	Although the punitive damages pleading statute is procedural in nature, it also provides a substantive right to parties not to be subjected to a punitive damages claim and attendant discovery of financial worth until the showing is made. The statute has been made to the trial court. If witness, or better witness, is discovered on new of trial, unless there is some reason why continuance or delay would be abuse to opposing party or court, the most that could fairly be required is that opposing party be given reasonable time in which to examine witness and make such additional preparation as may be required by information elicited from witness.	Do parties have a substantive right not to be subjected to a punitive damages claim and attendant discovery of financial worth until the requisite showing of fault damages has been made to the trial court?	031047.docx	LEGAL/ASE-00138035-LEGAL/ASE-00138036	SA, Sub	0.34	0	0	1	1	
587	Com., Dept of Highway v. Frank Fehr Brewing Co., 376 S.W.2d 541	307A+725	It is not suggested that appellant's interrogatory was falsely answered or that counsel for Fehr acted in bad faith. The object of discovery is to eliminate surprise, not to ring-fence the search for new evidence to perfect one's case. If a witness (or a better witness) is discovered on the eve of trial, unless there is some reason why a continuance or delay would be an abuse to the opposing party, possibly upon the basis of information elicited from the witness, the most that could fairly be required is that opposing party be given reasonable time in which to examine witness and make such additional preparation as may be required by information elicited from witness.	If witness, or better witness, is discovered on new of trial, unless there is some reason why continuance or delay would be abuse to opposing party or court, the most that could fairly be required is that opposing party be given reasonable time in which to examine witness and make such additional preparation as may be required by information elicited from witness.	Should an opposing party be given reasonable time to examine a witness and make additional preparations if a witness is discovered on eve of trial?	031484.docx	LEGAL/ASE-00137116-LEGAL/ASE-00137117	Condensed SA	0.59	0	1	0	1	

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Between Copied Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
588	<i>Ethies v. Krinsky</i> , 198 Misc.2d 251	307A-91	The Court held that the purpose of examination before trial is to get out facts and that both sides should have a fair opportunity to examine and cross-examine witnesses. The Court stated that, in permitting parties to elicit material and necessary testimony by examination before trial, a party who does not have the burden of proof will be allowed to examine an adversary before trial in order to obtain such testimony in aid of a cause of action or defense. In the course of its opinion the Court said, 274 App.Dv. at page 12, 80 N.Y.S.2d at page 26: "We have decided to reconsider the problem, as relating to the burden of proof, and to redefine the policy and practice in that regard in commercial litigation." (Emphasis mine.)	Under Civil Practice Act, permitting parties to elicit material and necessary testimony by examination before trial, party who does not have the burden of proof be allowed to examine an adversary before trial in order to obtain such testimony in aid of cause of action or defense. Civil Practice Act, § 288.	"Under the Civil Practice Act, will the party who does not have a burden of proof be allowed to examine an adversary before trial in order to obtain such testimony in aid of cause of action or defense?"	031795.docx	LEGALISE-00138248 LEGALISE-00138249	Condensed, SA	0.59	839	15,344	14,873	21,876	9,079
	<i>Perryman v. Crawford</i> , 968 So. 2d 83	307-3324	In the context of the interpretation and enforcement of pretrial orders mandating witness disclosure, broad discretion is vested in the trial court and reviewing courts should reverse the trial judge only where there is a clear showing of abuse prejudicial to the affected party.	In the context of the interpretation and enforcement of pretrial orders mandating witness disclosure, broad discretion is vested in the trial court and reviewing courts should reverse the trial judge only where there is a clear showing of abuse prejudicial to the affected party.	Is broad discretion vested in a trial court in the context of interpretation and enforcement of pretrial orders mandating witness disclosure and should the reviewing court reverse only where there is a showing of abuse?	020420.docx	LEGALISE-00139113 LEGALISE-00139116	Condensed, SA	0.78	0	1	0	1	
589			In this case, the court considered and addressed the issue of whether a pretrial order requiring witness disclosure was properly issued in the context of a motion for summary judgment. The court found that the order was proper and affirmed the judgment on appeal and remanding for new trial where defendant doctors surprised and prejudiced plaintiff by altering their previous testimony in the middle of trial. Office Depot, Inc. v. Miller, 584 So.2d 587, 590 (Fla. 4th DCA, 1991) (affirming order granting new trial on basis of surprise where, during trial, expert witnesses "recanted" his opinion given during discovery). <i>See also</i> <i>Sanchez-Burgos v. Morrison</i> , 745 So.2d 366 (Fla. 4th DCA, 1999) (affirming order granting new trial on basis of surprise and prejudice where defense's compulsory medical examination witness testified at trial for the first time, unequivocally, that plaintiff received no permanent injury).											
590	<i>Conahay v. Fisher</i> , 233 Mass. 234	113-3	General commercial customs or particular usages of trade, when not contrary to the express terms or necessary implications of the contract, may be proved by evidence of the custom or usage, or by the occupation or profession to the use of a word or phrase, and not invoking application of law contrary to established principles of common or statutory law. are valid. 208 Mass. 351, 355, 94 N. E. 281. The numerous cases collected in the brief for the plaintiff, where a custom has been held admissible and valid, all come within this classification. But customs which are in conflict, either with the express or implied terms of the contract, or undertake to modify or vary the express or implied terms of the contract, or of cases or persons, a law regular unit, such cases are bad. Within the inhibition of this classification falls the custom sought to be shown in the case at bar. So far as there is anything stated in the opinion in <i>Shute v. Bills</i> , 191 Mass. 433, 436, 78 N. E. 36, 77, R. A. (N. S.) 985, 114 Am. St. Rep. 631, at variance with this conclusion, it is unsupported by authority and cannot be followed. The issue in that case related to the undertaking by the landlord to make repairs and the negligent performance of that duty. The judgment in <i>Shute v. Bills</i> is not binding on this case. In offering to show an established custom in Boston to the effect that the landlord retains control of the yard and the outside of houses including the roof and gutters, it is said on page 438 of 191 Mass., on page 98 of 78 N. E., 77, R. A. (N. S.) 965, 114 Am. St. Rep. 631:	General commercial customs or particular usages of trade, when not contrary to the express terms or necessary implications of the contract, may be proved by evidence of the custom or usage, or by the occupation or profession to the use of a word or phrase, and not invoking application of law contrary to established principles of the common or statutory law. are valid. 208 Mass. 351, 355, 94 N. E. 281. The numerous cases collected in the brief for the plaintiff, where a custom has been held admissible and valid, all come within this classification. But customs which are in conflict, either with the express or implied terms of the contract, or undertake to modify or vary the express or implied terms of the contract, or of cases or persons, a law regular unit, such cases are bad. Within the inhibition of this classification falls the custom sought to be shown in the case at bar. So far as there is anything stated in the opinion in <i>Shute v. Bills</i> , 191 Mass. 433, 436, 78 N. E. 36, 77, R. A. (N. S.) 985, 114 Am. St. Rep. 631, at variance with this conclusion, it is unsupported by authority and cannot be followed. The issue in that case related to the undertaking by the landlord to make repairs and the negligent performance of that duty. The judgment in <i>Shute v. Bills</i> is not binding on this case. In offering to show an established custom in Boston to the effect that the landlord retains control of the yard and the outside of houses including the roof and gutters, it is said on page 438 of 191 Mass., on page 98 of 78 N. E., 77, R. A. (N. S.) 965, 114 Am. St. Rep. 631:	Are general commercial customs or particular usages of trade valid when used in a contract?	Customs & Usage - Memo 150- R.docx	RCS-00289000-RCS-001089001	Condensed, SA	0.8	0	1	0	1	
591	<i>R. R. Corbin v. Humble Oil & Ref. Co.</i> , 193 S.W.2d 824	260-92-49	f for no other reason than the fact that there was no consideration for the alleged agreement, it was clearly not binding as between the parties to it, and therefore was wanting in an essential element of estoppel. And since it was not binding upon the parties, and created in them no vested rights to the continuance of the formula, it furnished no valid basis for reliance upon such continuance in favor of anyone thereafter dealing with the oil properties. The Commission's power to regulate oil production is a continuing one, and its prerogatives are subject to change, modification or amendment at any time, upon due notice and hearing, either upon the Commission's own motion or upon application of an interested party. This principle is now so well established as to require no citation of authority. It should also be noted that each of the proration orders governing the Hawkins field contained the following provision	The Railroad Commission's power to regulate oil production in the interest both of conservation and of protecting correlative rights is a continuing one, and its proration orders are subject to change, modification, or amendment at any time, upon due notice and hearing, either upon the commission's own motion or upon application of interested parties.	Is the Commission's power to regulate oil production in the interest of both conservation and protecting correlative right a continuing one?	Mines and Minerals - Memo 892 - C - CSS.docx	RCS-002898457-RCS-002898458	Condensed, SA	0.65	0	1	0	1	
592	<i>Stonebridge Life Ins. Co. v. Pfitz</i> , 236 S.W.3d 226	307A-36.1	Within the class action mechanism, however, there are important safeguards for defendants that we must review. For example, due process requires that defendants be permitted to take appropriate discovery of absent class members and to present evidence at trial reasonably calculated to defeat the class members' claims. See <i>Peltier</i> , 51 S.W.3d at 625. Therefore, the discovery limitations imposed by the certification must be appropriate and reasonable. See 11.	Due process requires that defendants be permitted, in a class action, to take appropriate discovery of absent class members and to present evidence at trial reasonably calculated to defeat the class members' claims; therefore, the discovery limitations imposed by the certification of class must be appropriate and reasonable. U.S.C.A. Cont. Amend. §4; <i>Vernon's Ann. Texas Rules Civ.Proc.</i> , Rule 42.	"Does due process require that defendants be permitted, in a class action, to take appropriate discovery of absent class members and to present evidence at trial reasonably calculated to defeat the class members' claims?"	031576.docx	LEGALISE-00141152- LEGALISE-00141153	Order, SA, Sub	0.14	1	0	1	1	1

ROW	Judicial Opinion	WKS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
593	Com. v. Cent. Realty Co., 338 Pa. 172	371+2744	As we stated in Com. v. Lower Coal Co., 206 Pa. 359, 145 A. 916, 918: "State taxes stand on a different basis from local levies; the former are essential to the very 'preservation' of the state itself [Schoyer v. Connet O. & R. Co., 284 Pa. 189, 130 A. 413], while the latter are authorized or permitted by the state, not for its actual preservation, but merely to maintain the machinery of local government. So far as general principles enter into the matter, the basic interest of the sovereign authority requires the direct revenues of the commonwealth. To be so guarded that no lien for state taxes shall be disturbed except by payment, unless some constitutional or statutory rule dictates otherwise."	State taxes are essential to very preservation of state itself, while local levies are authorized or permitted by state merely to maintain machinery of local government, and commonwealth's direct revenues must be so guarded that no lien for state taxes shall be disturbed except by payment, unless some constitutional or statutory rule dictates otherwise.	"While local levies are authorized or permitted by state merely to maintain machinery of local government, are state taxes essential to very preservation of a state itself?"	045143.docx	LEGAL/ASE-00140863-LEGAL/ASE-00140864	Condensed, SA	0.5	839	15,344	14,873	21,876	9,079
	W.S. Butterfield Theatres v. Dep't. of Revenue, 353 Mich. 345	371+3621	The principles here involved were well expressed by the Supreme Court of the United States in State Board of Tax Commissioners of Indiana v. Jackson, 283 U.S. 527, 515 Ct. 540, 543, 751 Ed. 1248, wherein it was held, in upholding the constitutionality of a chainstore tax: "The principles which govern the decision of this cause are well settled. The power of taxation is fundamental to the very existence of the government and its exercise by the state is not to be impeded by the state's duty to carry the main protection of the law does not compel the adoption of an iron rule of equal taxation, nor prevent variety or differences in taxation, of properties, businesses, trades, callings, or occupations. Belft Gap R. Co. v. Pennsylvania, 134 U.S. 232, 10 S.Ct. 533, 33 L.Ed. 892; Southwestern Oil Co. v. Texas, 217 U.S. 114, 30 S.Ct. 496, 54 L.Ed. 688; Brown-Forman Co. v. Kentucky, 217 U.S. 563, 30 S.Ct. 578, 54 L.Ed. 883.	Restriction that power of taxation shall not be so exercised as to deny to any the equal protection of the laws does not compel adoption of an iron rule of equal taxation, nor prevent variety or differences in taxation, or discretion in selection of subject, or classification for taxation of property, businesses, trades, callings, or occupations.	Does the restriction that the power of taxation shall not be so exercised as to deny to any the equal protection of the laws prevent discretion in the selection of subjects or the classification for taxation?	045179.docx	LEGAL/ASE-00141109-LEGAL/ASE-00141110	SA, Sub	0.66	0	0	1	1	1
594	Towne Properties v. City of Fairfield, 50 Ohio St.2d 356	371+2005	In the exercise of their taxing powers, the municipalities and the state are subject to the requirements of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. However, this clause imposes no iron rule of equality, prohibiting the flexibility and variety that are appropriate to reasonable schemes of taxation. Allied States of Ohio v. Bowers [1959], 358 U.S. 522, 79 S.Ct. 457, 3 L.Ed.2d 480.	Although, in the exercise of their taxing powers, municipalities and the state are subject to the requirements of the equal protection clause of the Fourteenth Amendment, that clause imposes no iron rule of equality, prohibiting the flexibility and variety that are appropriate to reasonable schemes of taxation. U.S.C.A. Const. Amend. 14.	"Does the equal protection clause of the Fourteenth Amendment impose an iron rule of equality, prohibiting the flexibility and variety that are appropriate to reasonable schemes of taxation by the municipalities and the state?"	045421.docx	LEGAL/ASE-00140997-LEGAL/ASE-00140999	SA, Sub	0.22	0	0	1	1	1
595	Terry v. Terry, 160 Ind. App. 653	307+7231.1	Further, while a trial judge may sua sponte grant a continuance because of a party's illness, such action is within the sound discretion of the judge and will not be disturbed on appeal absent a clear showing of abuse of discretion. The trial judge is in a position to best view the parties, appraise their difficulties, if any, and to act accordingly. In reviewing such actions, this court will not engage in speculation or supposition. Where, as is the case here, appellant fails to show an abuse of discretion, we will affirm the action of the trial court.	Though a trial judge may sua sponte grant continuance because of party's illness, such action is within sound discretion of judge and will not be disturbed on appeal absent clear showing of abuse of discretion.	"Though a trial judge may sua sponte grant continuance because of party's illness, is such action within the sound discretion of a judge and will not be disturbed on appeal absent a clear showing of abuse of discretion?"	000654.docx	LEGAL/ASE-00142726-LEGAL/ASE-00142727	Condensed, SA	0.61	0	1	0	1	1
596	Cobb v. Fisher, 20 So. 3d 1253	30+3328	Pricett v. ION Med. Apparel, Inc., 938 So.2d 933, 935 (Ala.2006). We note that "[t]he decision concerning the appropriate sanction for failure to comply with a pretrial order, including whether to exclude the testimony of the noncomplying witness, is within the trial court's discretion," and we review such decisions to determine whether the trial court exceeded its discretion. Vesta Fire Ins. Corp. v. Millam & Co. Center, Inc., 903 So.2d 84, 105 (Ala.2004) (citing Truck Rentals of Alabama, Inc. v. W.O. Carroll-Wentons Co., 623 So.2d 1106, 1112 (Ala.1993), and Mitchell v. Moore, 405 So.2d 347, 350 (Ala.1981)).	The decision concerning the appropriate sanction for failure to comply with a pretrial order, including whether to exclude the testimony of the noncomplying witness, is within the trial court's discretion, and the Supreme Court reviews such decisions to determine whether the trial court exceeded its discretion.	"% the decision concerning the appropriate sanction for failure to comply with a pretrial order, including whether to exclude the testimony of the noncomplying witness, within the trial court's discretion?"	033771.docx	LEGAL/ASE-00142712-LEGAL/ASE-00142713	Condensed, SA, Sub	0.53	0	1	1	1	1
597	Copiah City Sch. Dist. v. Beckner, 61 So. 3d 162	313+463	The plaintiff bears the burden to demonstrate good cause for a failure to serve process in a timely manner. Montgomery v. Smithline Beecham Corp., 910 So.2d 541, 547 (Miss.2005) (citing Holmes v. Coast Transit Auth., 815 So.2d 1183, 1184 (Miss.2002)). "To establish 'good cause' the plaintiff must demonstrate at least as much as would be required to show excusable neglect," as to which simple inadvertence or mistake of counsel is not sufficient. The plaintiff must show more than a mere inadvertence or mistake of counsel or ignorance of the rules, usually does not suffice." Webster, 834 So.2d at 28 (citing Peters v. United States, 9 F.3d 344, 345 (5th Cir.1993)). To meet the burden of proof of good cause, the plaintiff must demonstrate that a diligent effort was made to effect timely service. Foss v. Williams, 993 So.2d 378, 379 (Miss.2008). The plaintiff must show more than that service failed due to "simple inadvertence or mistake of counsel or ignorance of the rules." Walters, 675 So.2d at 1243.	The plaintiff bears the burden to demonstrate good cause for a failure to serve process in a timely manner; to establish good cause the plaintiff must demonstrate at least as much as would be required to show excusable neglect, as to which simple inadvertence or mistake of counsel is not sufficient. The plaintiff must show more than a mere inadvertence or mistake of counsel or ignorance of the rules, usually does not suffice. Webster, 834 So.2d at 28 (citing Peters v. United States, 9 F.3d 344, 345 (5th Cir.1993)). To meet the burden of proof of good cause, the plaintiff must demonstrate that a diligent effort was made to effect timely service. Foss v. Williams, 993 So.2d 378, 379 (Miss.2008). The plaintiff must show more than that service failed due to "simple inadvertence or mistake of counsel or ignorance of the rules." Walters, 675 So.2d at 1243.	Does the plaintiff bear the burden to demonstrate good cause for a failure to serve process in a timely manner in order to avoid dismissal of action?	033931.docx	LEGAL/ASE-00142390-LEGAL/ASE-00142391	Condensed, SA, Sub	0.55	0	1	1	1	1
598	Withrow v. Williams, 216 W. Va. 385	307+560	In so holding, this Court acknowledged that Rule 4(f), itself, contemplates relief in limited circumstances from a failure to timely serve the summons and complaint. In that regard, syllabus point 3 of Kaufman states: "Dismissal under Rule 4(f) of the West Virginia Rules of Civil Procedure is mandatory in a case in which good cause for the lack of service is not shown, and a plaintiff whose case is subject to dismissal for noncompliance with Rule 4(f) has two options to avoid the consequence of the dismissal: (1) to timely show good cause for not having effected service of the summons and complaint, or (2) to file the new complaint under the new complaint. Rule 4(f) (1997).	Dismissal for failure to timely serve summons and complaint is mandatory if good cause for the lack of service is not shown, and a plaintiff whose case is subject to dismissal for noncompliance with the rule has two options to avoid the consequence of the dismissal: (1) timely show good cause for not having effected service of the summons and complaint, or (2) to file the new complaint under the new complaint. Rule 4(f) (1997).	Is a dismissal for failure to timely serve summons and complaint mandatory if good cause for the lack of service is not shown?	Pretrial Procedure - Memo #6136 - C-58.docx	RCS-003315125-HOSS-003315126	Condensed, SA, Sub	0.36	0	1	1	1	1
599														

ROW	Judicial Opinion	WIKNS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
600	Kole v. Brubaker, 325 Ill. App. 3d 944	307A+63	In moving for dismissal under Rule 103(b), the defendant is initially required to make a prima facie showing that the plaintiff failed to exercise reasonable diligence in effectuating service after filing suit; no such showing is required if the defendant can establish, by a preponderance of the evidence, that the plaintiff acted reasonably in failing to effectuate service. See Michael, Illinois Practice, Civil Procedure, ¶ 8-2.13 (1989). No absolute time frame exists that will shift the burden and require the plaintiff to offer an explanation for his or her actions. Rather, because of the nature of the issue, the determination of whether the defendant has established a prima facie case of lack of diligence must be made on a case-by-case basis. See Michael, Illinois Practice, Civil Procedure, ¶ 8-2.13 (1989).	In moving for dismissal (or lack of diligence), the defendant is initially required to make a prima facie showing that the plaintiff failed to exercise reasonable diligence in effectuating service after filing suit; no such showing is required if the defendant can establish, by a preponderance of the evidence, that the plaintiff acted reasonably in failing to effectuate service. See Michael, Illinois Practice, Civil Procedure, ¶ 8-2.13 (1989). No absolute time frame exists that will shift the burden and require the plaintiff to offer an explanation for his or her actions. Rather, because of the nature of the issue, the determination of whether the defendant has established a prima facie case of lack of diligence must be made on a case-by-case basis. Sup. Ct. Rules, Rule 103(b).	Should the determination of whether the defendant has established a prima facie case of lack of diligence in serving defendant be made on a case-by-case basis?	Pretial Procedure - Memo # 65107 - C - Q.docx	ROSS-003318354-ROSS-003318355	SA, Sub	0.24	839	15,344	14,873	21,876	9,029
601	Holland v. Jaffer, 80 Ark. App. 316	31+63	Service of process under Rule 4(f) must be accomplished within 120 days after the filing of the complaint unless the plaintiff has filed a motion to extend time prior to the expiration of the deadline. If a service is not obtained within that time and no timely motion to extend is made, dismissal of the action is mandatory. Rules Civ Proc., Rule 4(f).	Service of process under civil procedure rule governing summons must be accomplished within 120 days after the filing of complaint unless plaintiff has filed a motion to extend time prior to the expiration of the deadline. If service is not obtained within that time and no timely motion to extend is made, dismissal of the action is mandatory. Rules Civ Proc., Rule 4(f).	Should service of process under civil procedure rule governing summons be accomplished within 120 days after the filing of the complaint unless a plaintiff has filed a motion to extend time prior to the expiration of the deadline?	Pretial Procedure - Memo # 65931 - C - NS.docx	ROSS-003329803-ROSS-003329804	Order, SA, Sub	0.11	1	0	1	1	1
602	Will v. Wilmore, 349 Ill. App. 3d 880	307A+60	Rule 103(b) further aims to protect defendants from unnecessary delay in the service of process so that they are afforded a fair opportunity to investigate. Thus, Rule 103(b) seeks to prevent circumventing a primary purpose of statutes of limitation by not allowing a plaintiff to timely file suit before the applicable limitation period expires and then intentionally take no action to serve the defendant until the plaintiff is ready to proceed with litigation. In moving for dismissal under Rule 103(b), the plaintiff has the burden of establishing that the defendant exercised due diligence in effectuating service and that the plaintiff failed to exercise reasonable diligence in effectuating service after filing suit.	In moving for dismissal based on lack of diligence, the defendant is initially required to make a prima facie showing that the plaintiff failed to exercise reasonable diligence in effectuating service after filing suit. Sup. Ct. Rules, Rule 103(b).	"If the defendant required to make a prima facie show that the plaintiff failed to exercise reasonable diligence in effectuating service after filing suit, in moving for dismissal based on lack of diligence?"	Pretial Procedure - Memo # 6736 - C - SB.docx	ROSS-00336328-ROSS-003316329	SA, Sub	0.64	0	0	1	1	
603	Blincoff, O & G Indus., 89 Conn. App. 521	307A+63	We therefore review whether the court based its discretion in rendering a judgment of nonsuit as a sanction. "[D]iscretion imports something more than hasty decision-making.... It means a legal discretion, to be exercised in accordance with the law, and not a mere arbitrary choice. In addition, the court's discretion should be exercised mindful of the policy preference to bring about a trial on the merits of a dispute whenever possible and to secure for the litigant his day in court.... The design of the rules of practice is both to facilitate business and to advance justice; they will be interpreted liberally in any case where it shall be manifest that a strict adherence to them will work injustice or inequity.... Rules are to be construed so as to give effect to their purpose and to avoid any result that would favor the termination of proceedings without a determination of the merits of the controversy where that can be brought about with due regard to necessary rules of procedure.... Therefore, although dismissal of an action is not an abuse of discretion where a party shows a deliberate, contumacious or unwarranted disregard for the court's authority... the court should be reluctant to employ this sanction of dismissal except as a last resort, and where it would be the only reasonable remedy available to vindicate the legitimate interests of the other party and the court." (Citations omitted; internal quotation marks omitted.) Millbrook Owners Assn., Inc. v. Hamilton Standard, Supra, 237 Conn. at 167, 776 A.2d 1115. The reasoning of Millbrook Owners Assn., Inc. applies equally to nonuits and dismissals.	Although dismissal of an action is not an abuse of discretion where a party shows a deliberate, contumacious, or unwarranted disregard for the court's authority, the court should be reluctant to employ the sanction of dismissal except as a last resort, and where it would be the only reasonable remedy available to vindicate the legitimate interests of the other party and the court.	"% dismissal of an action not an abuse of discretion where a party shows a deliberate, contumacious, or unwarranted disregard for the court's authority?"	034512.docx	LEGALCASE-00143824-LEGALCASE-00143825	Condensed, SA	0.75	0	1	0	1	
604	Duarte v. Snapon Inc., 216 So. 3d 771	307A+63	To obtain a dismissal for fraud on the court, the movant must prove his case by clear and convincing evidence. See Myrick v. Direct Gen. Ins. Co., 933 So.2d 392, 392 (Fla. 2d DCA 2006). Substantively, he must show that his opponent "intentionally set in motion some unconscionable scheme to defraud the court and thereby deprive it of its jurisdiction to adjudicate a matter by improperly influencing the trier of fact or unfairly hampering the presentation of the opposing party's claim or defense." Jacob, 840 So.2d at 1169 (quoting Cox v. Burke, 705 So.2d 413, 46 (Fla. 5th DCA 1998)). This standard requires that a trial court "balance two important public policies of this state: our much preferred policy of adjudicating disputed civil cases on the merits and the policy of protecting the integrity of the judicial system." See, e.g., Citizens Prop. Ins. Co. 885 So.3d 965, 967 (Fla. 2d DCA 2023) (citing Gilbert v. Eckerd Corp. of Fla., 34 So.3d 773, 776 (Fla. 4th DCA 2010)). "Generally, unless it appears that the process of trial has itself been subverted, factual inconsistencies or even false statements are well managed through the use of impeachment at trial or other traditional discovery sanctions, not through dismissal of a possibly meritorious claim." 959 So.2d at 1311.	Generally, unless it appears that the process of trial has itself been subverted, factual inconsistencies or even false statements are well managed through the use of impeachment at trial or other traditional discovery sanctions, not through dismissal of a possibly meritorious claim.	"Unless it appears that the process of trial has itself been subverted, are factual inconsistencies or even false statements well managed through the use of impeachment or other traditional discovery sanctions?"	034622.docx	LEGALCASE-00144439-LEGALCASE-00144440	Condensed, SA	0.78	0	1	0	1	
605	Villasenor v. Martinez, 991 So. 2d 433	307A+63	While a trial court has the inherent authority to dismiss an action based on fraud and collusion, the power should be used cautiously and sparingly, and only for the most blatant showings of fraud, pretense, collusion, or other similar wrong doing. See Cross v. Jumbo, Inc., 910 So.2d 838, 840 (Fla. 1st DCA 2006). See also, Cross v. Jumbo, Inc., 910 So.2d 838, 840 (Fla. 1st DCA 2006). See also, Cross v. Jumbo, Inc., 910 So.2d 838, 840 (Fla. 1st DCA 2006). Fraud warranting the severe sanction of dismissal occurs when it is established by clear and convincing evidence "that a party has intentionally set in motion an unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier of fact or unfairly hampering the presentation of the opposing party's claim or defense." Cox v. Burke, 705 So.2d 413, 46 (Fla. 5th DCA 1998).	Fraud warranting the severe sanction of dismissal occurs when it is established by clear and convincing evidence that a party has intentionally set in motion an unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier of fact or unfairly hampering the presentation of the opposing party's claim or defense.	When does fraud warrant the severe sanction of dismissal?	035407.docx	LEGALCASE-00144981-LEGALCASE-00144982	Condensed, SA	0.53	0	1	0	1	

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Between Original Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
606	Adams v. Guzik, 21 Afr. 164	307A-74	The interest that disqualifies a witness must be some legal, certain and immediate interest in the result of the case, or in the recovery or non-recovery of money or property, or in the preservation of his personal security or an attachment bond has no such interest as will disqualify him as a witness for his principal, in a bill by the defendant to enjoin the attachment suit. The provisions of the statute (Dug., chap. 55, sec. 18), requiring exhibits to be attached to the depositions of witnesses proving them, do not apply to a case where the exhibits are made a part of the bill or answer, and filed with it. It is sufficient if the witness refer to the bill or answer, and filed with it. It is sufficient if the witness refer to the exhibits by their marks and numbers as designated and identified by the answer, etc.	The provisions of the statute (Dug., chap. 55, sec. 18), requiring exhibits to be attached to the depositions of witnesses proving them, do not apply to a case where the exhibits are made a part of the bill or answer, and filed with it. It is sufficient if the witness refer to the exhibits by their marks and numbers as designated and identified by the answer, etc.	"Do the provisions of the statute requiring exhibits to be attached to the depositions of witnesses proving them apply to a case where the exhibits are made a part of the bill or answer?"	03317.docx	LEGALASE-00145395- LEGALASE-00145396	Condensed, SA, Sub	0.51	0	1	14,873	21,876	9,079
607	Trans Health Mgmt. Inc. v. Nunziata, 159 So. 3d 850	307A-563	"A 'fraud on the court' occurs where it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier or unfairly hampering the presentation of the opposing party's claim or defense." Ramsey v. Hawley Furniture Cos., 393 So.2d 3034, 1038 (Fla. 1st DCA, 1980). (quoting <i>Adams v. Mobil Oil Corp.</i> , 892 F.2d 1115, 1118 (1st Cir. 1988)).	A "fraud on the court" occurs where it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier or unfairly hampering the presentation of the opposing party's claim or defense.	"Does fraud arise when it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme?"	Perital Procedure - Memo # 6525 - C- SK.docx	RCS5-003289728-RCS5- 003389729	Condensed, SA	0.28	0	1	0	1	1
608	Reyes v. Int'l Teknals Supply Co., 666 S.W.2d 622	307A-483	Generally, where a party fails to answer a request for admissions within the period set by the court, the facts stated therein will be taken as true, and the courts will not allow evidence to refute or controvert those facts. The request are likewise deemed admitted when the answers are not properly verified. <i>Tex.R. Civ.Pro.</i> 369.5a; 2 McDonalds, Texas Civil Practice 30.05. The facts are considered to be established as a matter of course when the party fails to answer the request for admissions within the time set by the court, and it is usually unnecessary to file a formal motion asking that the request be deemed admitted.	Generally, where a party fails to answer a request for admissions within the period set by the court, the facts stated therein will be taken as true, and the courts will not allow evidence to refute or controvert those facts. The request are likewise deemed admitted when the answers are not properly verified. <i>Tex.R. Civ.Pro.</i> 369.5a; 2 McDonalds, Texas Civil Practice 30.05. The facts are considered to be established as a matter of course when the party fails to answer the request for admissions within the time set by the court, and it is usually unnecessary to file a formal motion asking that the request be deemed admitted.	"Generally, where a party fails to answer a request for admissions within the period set by a trial court, will the facts stated therein be taken as true, and courts will not allow evidence to refute or controvert those facts?"	Perital Procedure - Memo # 7276 - C- K.docx	RCS5-003290012-RCS5- 003390013	SA, Sub	0.59	0	0	1	1	1
609	Mueflier v. Shaktlett, 156 Neb. 881	307A-483	Section 257.267.41, R.S.Supp. 1951, is identical with Rule 36 of the Federal Rules of Civil Procedure, 28 U.S.C.A. Its provisions are not merely directory, but substantial compliance therewith is required. However, they are not self-executing, and the party claiming admissions for failure to answer must move for summary judgment, and the court must find that the party failed to properly respond thereto. In that connection, the applicable rule here is that where a party properly serves a request for admissions of relevant matters of fact or the genuineness of relevant documents, and all objections thereto are heard and appropriately denied by court, and other party has been ordered to respond thereto, failure of such party to do so within time ordered by court is deemed a failure to respond thereto, and the facts sought to be elicited. In such situation a motion for summary judgment is proper, and the court may grant it. The facts sought to be elicited by the party are deemed to be established as a matter of course when the party fails to answer the request for admissions within the time set by the court, and it is usually unnecessary to file a formal motion asking that the request be deemed admitted.	Where a party properly serves request for admissions of relevant matters of fact or genuineness of relevant documents, and all objections thereto are heard and appropriately denied by court, and other party has been ordered to respond thereto, failure of such party to do so within time ordered by court is deemed a failure to respond thereto, and the facts sought to be elicited.	Does a failure to appropriately respond within time allotted to a properly served request for admission of facts constitute an admission of facts sought to be elicited?	033383.docx	LEGALASE-00145405- LEGALASE-00145406	SA, Sub	0.73	0	0	1	1	1
610	Cordts v. Chicago Tribune Co., 369 Ill. App. 3d 601	307A-561.1	"A section 27.613 motion to dismiss admits the legal sufficiency the complaint and raises defects, defenses or other affirmative matters which appear on the face of the complaint or are established by external submissions which act to defeat the plaintiff's claim, thus enabling the court to dismiss the complaint after considering issues of law or easily proved issues of fact." 317A, 750 ICS 317.613, Ill App. 3d 1139, 1144, 259 Ill Dec. 586, 759 N.E.2d 666, 69 (2001).	A motion to dismiss based upon certain defects or defenses admits the legal sufficiency of the complaint and raises defects, defenses, or other affirmative matters which appear on the face of the complaint or are established by external submissions which act to defeat the plaintiff's claim, thus enabling the court to dismiss the complaint after considering issues of law or easily proved issues of fact. 317A, 750 ICS 317.613.	Can a motion to dismiss base upon defects or defenses admit the legal sufficiency of the complaint?	Perital Procedure - Memo # 7942 - C- SK.docx	RCS5-003294778-RCS5- 00339480	SA, Sub	0.13	0	0	1	1	1
611	Tenneco Resins v. Davy Int'l Ag. 770 F.2d 416	257+182[2]	Appellee also contends that it has been prejudiced by appellant's participation in the litigation in two ways. First, it contends that Davy has taken advantage of substantial judicial discovery procedures not available in arbitration. The Second Circuit has indicated, in a case in which it found no waiver of the right to arbitrate, that the taking of judicial advantage of the discovery process in litigation might constitute sufficient prejudice to infer waiver. <i>Carich v. Rieder A/B NORDE</i> , 389 F.2d 692, 696 & 696 n. 7 (2d Cir. 1968) (citing cases in which party instituting suit utilized discovery proceedings). However, when only a minimal amount of discovery has been conducted, which may also be useful for the purpose of arbitration, the court should not ordinarily infer waiver based upon prejudice to the party opposing the motion to stay litigation. <i>American Dairy Queen Corp. v. Iardillo</i> , 535 F.Supp. 718, 719 (S.D.N.Y. 1982). The court should not infer waiver based upon the length of time between filing of suit and motion to stay pending arbitration, which was limited to matters pertaining to arbitration, not of such magnitude that either party had been prejudiced), particularly when, as here, the defendant clearly stated the desire to arbitrate the matter in its original answer and continued to assert the desire for arbitration during the discovery process.	When only a minimal amount of discovery has been conducted, which may also be useful for purpose of arbitration, court should not ordinarily infer waiver based upon prejudice to party opposing the motion to stay litigation pending arbitration.	Can a court infer waiver based upon prejudice to the party opposing the motion to stay litigation pending arbitration when only a minimal amount of discovery has been conducted?	007885.docx	LEGALASE-00148944- LEGALASE-00148946	Condensed, SA, Sub	0.83	0	1	1	1	1
612	Patton v. Vera Tech, 346 So. 2d 983	307A-590.1	This Court has identified a two-step test to be applied by trial courts considering whether a dismissal for failure to prosecute is proper under rule 1.420(e). "If first, the defendant must show that there was no record activity for the year preceding the motion. Second, if there was no record activity, the plaintiff has an opportunity to establish good cause why the action should not be dismissed." <i>Metropolitan Dade County v. Hall</i> , 784 So.2d 1087, 1090 (Fla.2001).	A two-step test is to be applied by trial courts considering whether a dismissal for failure to prosecute is proper: first, the defendant must show that there was no record activity for the year preceding the motion; second, if there was no record activity, the plaintiff has an opportunity to establish good cause why the action should not be dismissed. West's F.S.A. ROP Rule 1.420(e).	Is a two-step test to be applied by trial courts considering whether a dismissal for failure to prosecute is proper?	035075.docx	LEGALASE-00148468- LEGALASE-00148469	Condensed, SA, Sub	0.17	0	1	1	1	1

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
	Oversole v. Mand, 216 P.3d 621	307A+583	The dismissal of an action for failure to prosecute lies within the sound discretion of the trial court. Cullen v. Phillips, 30 P.3d 828, 834 (Colo.App.2001). Thus, the court may deny a motion to dismiss for failure to prosecute when evaluating a motion to dismiss for failure to prosecute. "a trial court must bear in mind that courts exist primarily to afford a forum to settle litigable matters between disputing parties. It is not the business of the court to resolve non-litigable matters between disputing parties." Cornelius v. River Ridge Ranch Landowners Ass'n, 202 P.3d 564, 570 (Colo.2009) (quoting Lake Meredith Reservoir Co. v. Arroyo Mut. Irrigation Co., 688 P.2d 1340, 1344 (Colo.1985)). "Dismissal with prejudice is a drastic sanction to be applied only in extreme situations." Nelson v. Blaker, 701 P.2d 335, 337 (Colo.1985).	A trial court's discretion to dismiss an action for failure to prosecute is not without bounds when evaluating a motion to dismiss for failure to prosecute. "a trial court must bear in mind that courts exist primarily to afford a forum to settle litigable matters between disputing parties."	"Should a court bear in mind that courts exist primarily to afford a forum to settle litigable matters between disputing parties when evaluating a motion to dismiss for failure to prosecute?"	Perital Procedure - Memo # 8005 - C- DHA_58361.docx	R055-003320923-R055-003320924	Condensed, SA, Sub	0.6	839	15,344	14,873	21,876	9,029
										0	1	1	1	1
613														
	Stapleton v. Shower, 251 S.W.3d 341	307A+581	In Toler, the Court further emphasized that the trial court is to consider the factors set forth in Ward, 809 S.W.2d 717, when making a determination as to whether to order dismissal pursuant to CR 41.02. Those factors include: "[1] the extent of the party's personal responsibility; [2] the history of dilatoriness; [3] whether the attorney's conduct was willful and in bad faith; [4] the meritoriousness of the claim; [5] prejudice to the other party; and [6] the availability of alternative sanctions." Ward, 809 S.W.2d at 719. These same factors are equally relevant when dismissal is imposed as a sanction for failure to comply with discovery requests. In Ward, the fact underlying the basis for the dismissal was the plaintiff's failure to timely respond to a discovery request and, consequently, the identification of an expert witness. Thus, the law set forth in Ward and, as clarified in Toler, is controlling when the court considers the issue of involuntary dismissal with prejudice.	Factors a trial court is to consider in ruling on the involuntary dismissal of a case for failure to prosecute or to comply with discovery rules include: (1) the extent of the party's personal responsibility; (2) the history of dilatoriness; (3) whether the attorney's conduct was willful and in bad faith; (4) the meritoriousness of the claim; (5) prejudice to the other party; and (6) the availability of alternative sanctions. Rules Civ. Proc., Rules 37.02, 41.02.	"Should the attorney's conduct be considered by court, in ruling on the involuntary dismissal of a case for failure to prosecute or to comply with discovery rules?"	016414.docx	LEGALCASE-00149001-LEGALCASE-00149002	SA, Sub	0.54	0	0	1	1	
										0	0	1	1	
614														
	Stapleton v. Shower, 251 S.W.3d 341	307A+581	In Toler, the Court further emphasized that the trial court is to consider the factors set forth in Ward, 809 S.W.2d 717, when making a determination as to whether to order dismissal pursuant to CR 41.02. Those factors include: "[1] the extent of the party's personal responsibility; [2] the history of dilatoriness; [3] whether the attorney's conduct was willful and in bad faith; [4] the meritoriousness of the claim; [5] prejudice to the other party; and [6] the availability of alternative sanctions." Id. at 351 (citing Ward, 809 S.W.2d at 719). These same factors are equally relevant when dismissal is imposed as a sanction for failure to comply with discovery requests. In Ward, the fact underlying the basis for the dismissal was the plaintiff's failure to timely respond to a discovery request and, consequently, the identification of an expert witness. Thus, the law set forth in Ward and, as clarified in Toler, is controlling when the court considers the issue of involuntary dismissal with prejudice.	Factors a trial court is to consider in ruling on the involuntary dismissal of a case for failure to prosecute or to comply with discovery rules include: (1) the extent of the party's personal responsibility; (2) the history of dilatoriness; (3) whether the attorney's conduct was willful and in bad faith; (4) the meritoriousness of the claim; (5) prejudice to the other party; and (6) the availability of alternative sanctions. Rules Civ. Proc., Rules 37.02, 41.02.	"Should the meritoriousness of the claim be considered by court, in ruling on the involuntary dismissal of a case for failure to prosecute or to comply with discovery rules?"	Perital Procedure - Memo # 8010 - C- SSG.docx	LEGALCASE-00038683-LEGALCASE-00038684	SA, Sub	0.54	0	0	1	1	
										0	0	1	1	
615														
	Jahn v. Burns, 593 P.2d 828	8.BIE-04	A negotiable instrument, or a commercial paper, involves the business of commerce insofar as activities delineated in Article III of the Uniform Commercial Code are concerned, i.e., transfer, rights of payor, payee, endorsement, etc. However, the use of such in connection with a noncommercial transaction does not ipso facto turn that transaction into a commercial transaction. Whether a transaction is to be treated as a commercial transaction is to be determined by the facts and circumstances of the particular case. See, e.g., Erie R. Co. v. Tompkins, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1937).	"Can use of negotiable instrument, or a commercial paper in connection with a non-commercial transaction turn that transaction into a commercial transaction?"	"Can use of negotiable instrument, or a commercial paper in connection with a non-commercial transaction turn that transaction into a commercial transaction?"	010610.docx	LEGALCASE-00149101-LEGALCASE-00149102	SA, Sub	0.03	0	0	1	1	
										0	0	1	1	
616														
	Morgan v. Ann Family Life Assur. Co. of Columbus, 559 F. Supp. 477	170A+1835	When ruling on a motion to dismiss for failure to state a claim upon which relief can be granted, the court must take all allegations in complaint as admitted, and the pleading should not be dismissed "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 78 S.Ct. 515, 2 L.Ed. 687 (1957). In addition, the motions in these diversity actions must be decided by applying the law of the forum. See Erie R. Co. v. Tompkins, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1937).	When ruling on a motion to dismiss for failure to state a claim upon which relief can be granted, court must take all allegations in complaint as admitted, and the pleading should not be dismissed unless it appears beyond doubt that plaintiff can prove no set of facts in support of claim which would entitle him to relief.	"In ruling on a motion to dismiss for failure to state a claim upon which relief can be granted, should the allegations of the complaint be viewed as admitted?"	Perital Procedure - Memo # 7977 - C- S5_58339.docx	R055-003284695-R055-003284670	Condensed, SA	0.52	0	1	0	1	
										0	1	0	1	
617														
	Harvey v. Town of Tiverton, 764 A.2d 141	307A+581	A motion to dismiss for failure to state a claim upon which relief can be granted is not enough to warrant dismissal for lack of prosecution. Scitelli v. Providence Gas Co., 415 A.2d 1040, 1042 n. 1 (R.I.1980) (citing Mantion Industries, Inc. v. Providence Washington Indemnity Co., 113 R.I. 138, 302 P.3d 355, 358 (1974)). Although the trial court must weigh the equities between the parties, see id., it need not view the evidence in a light most favorable to the plaintiffs. See J.K. Social Club v. J.K. Realty Corp., 448 A.2d 330, 333 (R.I.1982). In considering a motion to dismiss for failure to prosecute, the court is "required to weigh conflicting interests. On the one hand is the court's need to manage its docket, the public interest in the expeditious resolution of litigation, and the risk of prejudice to the defendants from delay. On the other hand, there is the desire to dispose of cases on their merits." Nyquist, 448 A.2d at 726.	In considering a motion to dismiss for failure to prosecute, the court is required to weigh conflicting interests: on the one hand is the court's need to manage its docket, the public interest in the expeditious resolution of litigation, and the risk of prejudice to the defendants from delay. On the other hand, there is the desire to dispose of cases on their merits. Superior Court Rules, Rule 41(b)(2).	"Is a court required to weigh the risk of prejudice to the defendants from delay, in considering a motion to dismiss for failure to prosecute?"	016504.docx	LEGALCASE-00149272-LEGALCASE-00149278	SA, Sub	0.53	0	0	1	1	
										0	0	1	1	
618														
	Pursell v. First Am. Nat. Bank, 337 S.W.2d 838	307A+631	A motion to dismiss for failure to state a claim upon which relief can be granted tests the sufficiency of the complaint. The basis for the motion is that the allegations contained in the complaint, considered alone and taken as true, are insufficient to state a claim as a matter of law. The motion admits the truth of all relevant and material allegations, but asserts that such facts do not constitute a cause of action. In resolving the issues in this appeal, we are required to construe the complaint liberally in the plaintiffs' favor and take the allegations of the complaint as true.	Motion to dismiss for failure to state a claim upon which relief can be granted tests sufficiency of complaint; basis for motion is that allegations contained in complaint, considered alone and taken as true, are insufficient to state claim as matter of law.	"Would the basis for a motion to dismiss a complaint for failure to state a claim upon which relief can be granted be that the allegations in the complaint when considered alone and taken as true, are insufficient to state a claim as a matter of law?"	Perital Procedure - Memo # 8502 - C- R_59274.docx	R055-003284540-R055-003284541	Condensed, SA	0.61	0	1	0	1	
										0	1	0	1	
619														

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Between Original Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
620	Mudd v. Nosker Lumber, 443 Pa. Super. 483	307A468	At the outset, we note that the question of whether to enter a judgment of non-prosecution of the plaintiff is a matter for the trial court's discretion. The trial court will be disturbed on appeal unless there is proof of a manifest abuse of that discretion. Penn Piping, Inc. v. Insurance Co. of North America, 529 Pa. 350, 354, 608 A.2d 1005, 1008 (1992). In order to dismiss a case for lack of activity, the movant must show: 1) a party has failed to diligently proceed with reasonable promptitude; 2) there was no compelling reason for the delay; and 3) the delay has caused some prejudice to the adverse party, which is not presumed in actions in which the delay exceeds two years. Wilson v. County of Cook, 2012 IL 112026, 14, 360 Ill. Dec. 148, 968 N.E.2d 641. The critical inquiry in the complaint, considered in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted. 735 Ill. Comp. Stat. Ann. 2-615. Wilson, 2012 IL 112026, 14, 360 Ill. Dec. 148, 968 N.E.2d 641. In conducting such review, all well-pleaded facts are assumed to be true. E.g., In re Estate of Brewer, 2015 IL App. 2d 140706, 11, 393 Ill. Dec. 757, 35 N.E.3d 349.	In order to obtain judgment of non-prosecution dismissing case for lack of activity, movant must show party has failed to diligently proceed with reasonable promptitude in order to dismiss case for lack of activity?	037431.docx	LEGALISE-00151717-LEGALISE-00151718	SA, Sub	0.73	0	0	1	1	21,876	9,079
621	Barber v. Schmidt, 354 P.3d 158	307A468	Alaska Rule of Civil Procedure 12(b)(6) provides for a motion to dismiss if the complaint "fail[s] ... to state a claim upon which relief can be granted." In order for the non-moving party to survive this motion "it is enough that the complaint set forth allegations of fact consistent with and appropriate to some enforceable cause of action.... The court must presume all factual allegations of the complaint to be true and (make) all reasonable inferences.... in favor of the non-moving party."	Court reviewing a motion to dismiss for failure to state a claim upon which relief can be granted must presume all factual allegations of the complaint to be true and make all reasonable inferences in favor of the non-moving party. Rules Civ.Proc., Rule 12(b)(6).	Should the court reviewing a motion to dismiss for failure to state a claim presume all factual allegations of the complaint to be true and make all reasonable inferences in favor of the non-moving party?	037991.docx	LEGALISE-00152700-LEGALISE-00152701	SA, Sub	0.47	0	0	1	1	
622	Rodriguez v. Brady, 79 N.E.3d 841	307A4622	A motion to dismiss brought under section 2-615 of the Code challenges the legal sufficiency of a complaint. Wilson v. County of Cook, 2012 IL 112026, 14, 360 Ill. Dec. 148, 968 N.E.2d 641. "The critical inquiry in deciding a section 2-615 motion to dismiss is whether the allegations of the complaint, considered in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted. 735 Ill. Comp. Stat. Ann. 2-615. Wilson, 2012 IL 112026, 14, 360 Ill. Dec. 148, 968 N.E.2d 641. In conducting such review, all well-pleaded facts are assumed to be true. E.g., In re Estate of Brewer, 2015 IL App. 2d 140706, 11, 393 Ill. Dec. 757, 35 N.E.3d 349.	The critical inquiry in deciding a motion to dismiss with respect to the pleadings is whether the allegations of the complaint, considered in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted. 735 Ill. Comp. Stat. Ann. 2-615.	Is critical inquiry in deciding a section 2-615 motion to dismiss the allegations of the complaint those which are considered in a light most favorable to the plaintiff sufficient to state a cause of action upon which relief can be granted?	037975.docx	LEGALISE-00152923-LEGALISE-00152924	SA, Sub	0.65	0	0	1	1	
623	Benscheid v. Hays, 665 P.2d 500	307A4581	Rule 14, 14(b) Uniform Rules for the District Court of the State of Wyoming (see n. 1) and Rule 41(b)(2), W.R.C.P. 6 authorize the district court to dismiss an action for lack of prosecution. Beyond that, a court has inherent power to dismiss an action upon its own motion for lack of prosecution. Link v. Wabash Railroad Company, supra, Johnson v. Board of Commissioners of Laramie County, Wyo., 588 P.2d 237, 238 (1978); and Moshamon Nat. Bank v. Iron Mountain Ranch Co., 45 Wyo. 285, 18 P.2d 623, 629 (1933). While no precise rule may be laid down as to what circumstances justify a dismissal for lack of prosecution, the court may consider the facts and circumstances surrounding each case and the purpose of preventing undue delay on the one hand, and the policy favoring disposition of cases on the merits on the other hand. Gaudin v. Haberman, Wyo., 644 P.2d 159, 160 (1982); Ace Novelty Co., Inc. v. Gooding Amusement Co., Inc., 664 F.2d 671, 763 (9th Cir. 1981); Citizens Utilities Company v. American Telephone and Telegraph Company, 595 F.2d 1174, 1174 (9th Cir. 1979), cert. denied 444 U.S. 931, 100 S.Ct. 273, 652 F.2d 1272 (1979); Davis v. Operation Amigo, Inc., 371 F.2d 301, 303 (10th Cir. 1967).	While no precise rule may be laid down as to what circumstances justify dismissal for lack of prosecution, circumstances surrounding each case must be examined, keeping in mind the conflict between need for the court to manage its docket for purpose of preventing undue delay on the one hand, and policy favoring disposition of cases on the merits on the other hand. Rules Civ.Proc., Rule 41(b)(2); District Court Rule 14.	Is there a precise rule that may be laid down as to what circumstances justify dismissal for lack of prosecution?	038840.docx	LEGALISE-00154372-LEGALISE-00154373	SA, Sub	0.67	0	0	1	1	
624	Salsabachew v. TRW, 100 Ohio App. 3d 903	307A446	A review of the record from the trial court fails to support TRW's assertion. Initially, it should be noted that appellant's citizenship and legal residency status are not relevant to TRW's defense of the action in Cuyahoga County. In order to justify process within the action, the plaintiff must show that the plaintiff is a resident of Cuyahoga County as to be available for depositions and other discovery. Should appellant fail to fully prosecute the action or comply with discovery, the trial court could impose the appropriate sanctions including involuntary dismissal of the case. Pembaur v. Lee (1982), 1 Ohio St.3d 89, 1 OBR 125, 437 N.E.2d 1199; Heard v. Sharp (1988), 50 Ohio App.3d 34, 52 N.E.2d 665. In addition, TRW's lack of compulsory process against third parties is not a valid concern given the fact that TRW has failed to identify any foreign factor provides a valid reason for retaining jurisdiction in Ohio. Galloway v. Lorimar Motion Picture Mgmt., Inc. (1989), 55 Ohio App.3d 78, 562 N.E.2d 949.	To successfully proceed with action, burden is on plaintiff to attend all pretrial and trial proceedings as well as to be available for depositions and other discovery. Should plaintiff fail to fully prosecute action or comply with discovery, trial court could impose appropriate sanctions including involuntary dismissal of case.	Can court impose appropriate sanctions including involuntary dismissal of case if plaintiff fails to fully prosecute action or comply with discovery?	039010.docx	LEGALISE-00155068-LEGALISE-00155069	SA, Sub	0.72	0	0	1	1	

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632	Di Cristofaloro, Laurel v. Orme, 201 F.3d 451 N.J. Super. 241	302A+411	First, it is to be noted that on such a motion as this one which, if successful, will result in the dismissal of the complaint, the court has the duty to ascertain whether the defendant has a cause of action that may be granted even from an obscure statement of claim, opportunity being given to amend if necessary. (Cohen v. Grubert, 5 N.J. Super. 400, 408, 99 A.2d 548 (1964); Chelov v. Thacher, 27 N.J. Super. 400, 408, 99 A.2d 548 (1964); Miller v. 5 N.J. Super. 451, 68 A.2d 421 (1959)). On this motion, the plaintiff is entitled to the benefit of the doubt.	On motion to strike the complaint as not setting forth facts upon which relief may be granted, the plaintiff is entitled to the benefit of the doubt. The court has the duty to ascertain whether the defendant has a cause of action that may be granted even from an obscure statement of claim, opportunity being given to amend if necessary. (Cohen v. Grubert, 5 N.J. Super. 400, 408, 99 A.2d 548 (1964); Chelov v. Thacher, 27 N.J. Super. 400, 408, 99 A.2d 548 (1964); Miller v. 5 N.J. Super. 451, 68 A.2d 421 (1959)). On this motion, the plaintiff is entitled to the benefit of the doubt.	"Before a court dismisses a civil complaint with prejudice, it should first ascertain whether the plaintiff in fact has a cause of action that may be granted even from an obscure statement of claim an opportunity to amend if necessary?"	Final Procedure - 003297003 NS_55972.docx	R055-003297004-R055-003297003	Order SA, Sub	0.44	1	0	14,873	21,876	9,079
633	McPhail v. F & B Assoc., 160 A.D.2d 398	307A+697	On July 1, 1989, more than one and one-half years after the date of the order striking the note of issue, plaintiffs moved to restore the case to the trial calendar, which a stipulation was granted by the Supreme Court. In that regard, while a party which has had its action stricken from the trial calendar and not restored for one year must move to vacate the automatic dismissal of the complaint, the court may properly treat a motion to restore case as one to vacate dismissal.	While party which has had its action stricken from trial calendar and not restored for one year must move to vacate automatic dismissal of complaint, court may properly treat motion to restore case as one to vacate dismissal. McKinney's CLR 3404.	"While a party which has had its action stricken from the trial calendar and not restored for one year must move to vacate automatic dismissal of complaint, can a court properly treat a motion to restore case as one to vacate dismissal?"	040582.docx	LEGAEASE-00162320-LEGAEASE-00162321	Condensed SA, Sub	0.54	0	1	1	1	1
634	Greater Franklin Developer Ass'n v. Town of Franklin, 49 Mass. App. Ct. 500	371A+002	"Fees" share common traits that distinguish them from taxes: (1) they are charged in exchange for a particular governmental service which benefits the party paying the fee in a manner "not shared by other members of society"; (2) they are paid by choice, in that the party paying the fee has the option of not utilizing the governmental service and thereby avoiding the charge; and (3) the charges are collected not to raise revenues but to compensate the government for the cost of the service. (See, e.g., Commonwealth v. Emerson College v. Boston, 381 Mass. 415, 424-425, 462 N.E.2d 1098 (1984) (citations omitted)).	"Fees" share common traits that distinguish them from "taxes." (1) They are charged in exchange for a particular governmental service which benefits the party paying the fee in a manner "not shared by other members of society." (2) They are paid by choice, in that the party paying the fee has the option of not utilizing the governmental service and thereby avoiding the charge, and (3) the charges are collected not to raise revenues but to compensate the government for the cost of the service. (See, e.g., Commonwealth v. Emerson College v. Boston, 381 Mass. 415, 424-425, 462 N.E.2d 1098 (1984) (citations omitted)).	"In distinguishing fees with taxes, do fees benefit the party in a manner not shared by other members of society?"	Taxation - Memo 1032 - C - JL_6476.docx	R055-0032963310	Condensed SA, Sub	0.08	0	1	1	1	1
635	Merch. v. State, 201 So. 3d 146	135H+95.1	Even in cases where a mistrial is declared over the objection of the defendant, the double jeopardy clause does not guarantee that a defendant cannot be retried. The right to have a trial concluded by a particular result does not give way to the public interest in the efficient administration of the courts. (See, e.g., United States v. Williams, 431 U.S. 481, 495, 98 S.Ct. 824, 830, 54 L.Ed.2d 717 (1978)). However, absent circumstances warranting the State's one full and fair opportunity to present its case, the right of a defendant to completion of his or her trial by a particular tribunal should be protected.	In cases where a mistrial is declared over the objection of the defendant, the double jeopardy clause does not guarantee that a defendant cannot be retried. The right to have a trial concluded by a particular result does not give way to the public interest in the efficient administration of the courts. (See, e.g., United States v. Williams, 431 U.S. 481, 495, 98 S.Ct. 824, 830, 54 L.Ed.2d 717 (1978)). However, absent circumstances warranting the State's one full and fair opportunity to present its case, the right of a defendant to completion of his or her trial by a particular tribunal should be protected.	"Where mistrial is declared over objection of a defendant, does a double jeopardy clause not guarantee that a defendant cannot be retried?"	053133.docx	LEGAEASE-00163089-LEGAEASE-00163090	Condensed SA, Sub	0.38	0	1	1	1	1
636	Palmer v. Ronald Realty Corp., 451 A.D.2d 548	307A+699	Although plaintiffs denominated their motion which culminated in the granting of summary judgment as a motion for summary judgment, the motion was in substance a motion for summary judgment. The motion was made to the Court's attention warranting leave to renew. Upon such renewal, the factors to be considered on plaintiffs' motion to vacate the default and to restore the action to the calendar are the progress of the case and intent to abandon (see Merco v. Sachs, 10 N.Y.2d 542, 526 N.Y.S.2d 353, 181 N.E.2d 992; Romero v. Amelring Rental and Leasing Systems, Inc., 49 A.D.2d 933, 348 N.Y.S.2d 772). The defendant's motion was inadequate, the remaining critical issue is that of delay.	Upon renewal of motion to open default and to restore action to calendar, factors to be considered are the progress of the case and intent to abandon. The factors to be considered on plaintiffs' motion to vacate the default and to restore the action to the calendar are the progress of the case and intent to abandon (see Merco v. Sachs, 10 N.Y.2d 542, 526 N.Y.S.2d 353, 181 N.E.2d 992; Romero v. Amelring Rental and Leasing Systems, Inc., 49 A.D.2d 933, 348 N.Y.S.2d 772). The defendant's motion was inadequate, the remaining critical issue is that of delay.	"Upon renewal of motion to open default and to restore action to calendar, factors to be considered are the progress of the case and intent to abandon?"	040668.docx	LEGAEASE-00163052-LEGAEASE-00163053	Condensed SA	0.74	0	1	0	1	1
637	In re Gateway Ethanol, 415 B.R. 486	349A+10	When the bright line test is not satisfied, LLC "120137" requires the court to consider "the facts of each case." This consideration is guided by the fact that the drafters of amended LLC "120137" sought to "preserve common law principles," under which the "central feature of a true lease is the reservation of an economically meaningful interest to the lessor. (See, e.g., United States v. Williams, 431 U.S. 481, 495, 98 S.Ct. 824, 830, 54 L.Ed.2d 717 (1978)).	Under Illinois law, when the bright line test for whether a transaction in the form of a lease creates a security interest is not satisfied, the court must then answer the question whether the lessor retained a reversionary interest, either an upside or downside risk. S.H.A. 8.10 ILCS 5/2-01(07) (2005).	"When the bright line test for whether a transaction in the form of a lease creates a security interest is not satisfied, should the court then answer the question whether the lessor retained a reversionary interest, either an upside or downside risk?"	Secured Transactions - Memo 33 - C - PC_68062.docx	R055-003294308-R055-003294309	Condensed SA, Sub	0.73	0	1	1	1	1
638	State v. Gradison, 758 NE.2d 1008	135H+100.1	While we conclude that the trial court's ruling was erroneous, we may not, as the State acknowledges, remand for retrial. A trial court's judgment that the evidence is legally insufficient to support a guilty verdict, even though erroneous, acts as an acquittal for double jeopardy purposes, and any retrial would violate defendant's rights under the Double Jeopardy Clause, U.S.C.A. Const.Amend. 5.	A trial court's judgment that the evidence is legally insufficient to support a guilty verdict, even though erroneous, acts as an acquittal for double jeopardy purposes, and any retrial would violate defendant's rights under the Double Jeopardy Clause, U.S.C.A. Const.Amend. 5.	"Does a trial court's judgment that the evidence legally insufficient to support a guilty verdict, even though erroneous, act as an acquittal for double jeopardy purposes?"	015752.docx	LEGAEASE-00166470-LEGAEASE-00166471	SA, Sub	0.31	0	0	1	1	1
639	Campbell v. AT&T Wireless Serv., 85 Ohio St. 3d 103	317A+101	Although no one factor is controlling in determining whether an entity conducts its operation in such a manner as to be a matter of public concern, Supreme Court weighs several, including lack of competition in the local marketplace, the good or service provided, and the existence of regulation by government authority, to determine if an entity, alleged to be a public utility, conducts its business in such a way as to become a matter of public concern.	Although no one factor is controlling in determining whether an entity conducts its operation in such a manner as to be a matter of public concern, Supreme Court weighs several, including lack of competition in the local marketplace, the good or service provided, and the existence of regulation by government authority, to determine if an entity, alleged to be a public utility, conducts its business in such a way as to become a matter of public concern.	"Are any factors controlling in determining whether an entity conducts in the matter of public concern?"	00799.docx	LEGAEASE-00081583-LEGAEASE-00081584	SA, Sub	0.23	0	0	1	1	1

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640	Wolf v. Scott/Wetzel Servs., 113 Wash. 2d 665	41+1	It has long been recognized that the Industrial Insurance Act (IIA) RCW Title 51 reflects a quid pro quo compromise between employees and employers. The state provides some claims relief, which it expects to be paid by the employer. In exchange, employees give up their common law right to sue for negligence or breach of contract liability. The employee, on the other hand, gives up common law actions and remedies in exchange for sure and certain relief. West 51.04.010, 51.12.010.	Under the Industrial Insurance Act, employer pays some claims for which it would not be liable under the common law in exchange for limited liability, whereas the employee gives up common law rights in exchange for sure and certain relief. West 51.04.010, 51.12.010.	"Under the Industrial Insurance Act, does an employer pay some claims for which it would not be liable under the common law in exchange for limited liability, whereas the employee gives up common law rights in exchange for sure and certain relief?"	047736.docx	LEGALCASE-00128744- LEGALCASE-00128746	SA, Sub	0.82	839 0	15_344 0	34,873 1	21,876 1	9/029
641	Roberts v. Sidham, 19 So. 3d 1155	307A+50	When a plaintiff shows good cause for failure to serve process within 120 days, the trial court must extend the time for service and has no discretion to do otherwise. Pitcon v. Williams Scotsman, Inc., 924 So.2d 37, 39 (Fla. 5th DCA 2006). The trial court has broad discretion to extend the time for service even when good cause for failing to meet the deadline is shown. See, e.g., Pitcon v. Williams Scotsman, Inc., 924 So.2d 37, 39 (Fla. 5th DCA 1998).	Rule governing dismissal of actions for failure to serve process within 120 days is designed to be a case management tool, not a additional statute of limitations cutting off the liability of a tortfeasor, and it is not to be imposed inflexibly when the plaintiff demonstrates diligence and good cause. West's F.S.A. MCP Rule 1.070(j).	Is the rule governing dismissal of actions for failure to serve process within 120 days designed to be a case management tool, not a additional statute of limitations cutting off the liability of a tortfeasor, and it is not to be imposed inflexibly when the plaintiff demonstrates diligence and good cause?	034084.docx	LEGALCASE-001452716- LEGALCASE-00145277-	SA	0.71	1	1	0	1	1
642	Zionofsky ex rel. State, 725 F.3d 197	221+502	Recognition is the act by which "a state commits itself to treat an entity as sovereign." Second Foreign Relations Law § 94(1). "The rights and attributes of sovereignty belong to [a state] independently of all recognition, but it is only after it has been recognized that it is assured of exercising them." John Bassett Moore, A Digest of International Law * 27, at 72 (1906) (Moore's Int'l Law Digest). Recognition is therefore a critical step in establishing diplomatic relations with the United States; if the United States recognizes a foreign government, it implicitly acknowledges its existence and its authority to speak as the sovereign authority for the territory it purports to control." Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 410-84 S.Ct. 923, 11 L.Ed.2d 804 (1964). Recognition also confers other substantial benefits. For example, a recognized sovereign generally may (1) maintain a suit in a United States court, see id. at 418-99; 84 S.Ct. 923; Guaranty Trust Co. v. Iragui, 288 U.S. 141, 53 S.Ct. 106, 27 L.Ed. 103 (1933); (2) assert the sovereign immunity defense in a United States court, see Nat'l City Bank v. Republic of China, 348 U.S. 356, 359, 75 S.Ct. 423, 99 L.Ed. 389 (1955); and (3) benefit from the "act of state" doctrine, which provides that "[e]very sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another country where such acts do not violate international law." Dames & Moore v. Ominicard Ltd., 426 U.S. 754, 771, 48 S.Ct. 297, 303, 38 S.Ct. 399, 62 L.Ed. 726 (1978) (quotation marks omitted).	An entity recognized by the United States as a foreign state may maintain a lawsuit in a United States court, and benefit from the "act of state doctrine," which provides that every sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory.	Will the courts of one country sit in judgment on the acts of the government of another done within its own territory?	International Law - Memo 265 - HDocx	R05S-00030383947-R05S-000303949	Condensed, SA, Sub 0.73	0	1	1	1	1	1
643	Gensets Corp. V. Equitable Tr. Co of New York, 241 N.Y. 418	36+1	Subrogation, an equitable doctrine taken from the civil law, is broad enough to include every instance in which one party pays a debt for another, whether or not the payment was made either under compulsion or for the protection of some interest of the party making the payment, and in discharge of an existing liability. Seldon on Subrogation (2d ed.) pp. 2, 4. Earl, J., in Cole v. Marcom, 65 N.Y. 363, 366, said that it is "applicable to cases where a party is compelled to pay the debt of a third person to protect his own interests." 102 N.Y. 262, 272, said or reported what had been said before, that it was founded upon principles of benevolence. In Pittsburgh-Westmoreland Coal Co. v. Kerr, 115 N.E. 465, 467, 220 N.Y. 137, 144, Chase, J., said it "includes so wide a range of subjects that it has been called the "mode which equity adopts to compel the ultimate payment of a debt by one who in justice, equity, and good conscience ought to pay	"Subrogation" includes every instance in which one pays a debt for which another is primarily answerable, and which in equity and good conscience should be discharged by the payer, rather than by the debtor, whether or not the payment was made either under compulsion or protection of some interest of payer, and in discharge of existing liability.	"Is subrogation broad enough to include every instance in which one party pays a debt for which another is primarily answerable, and which in equity and good conscience should be discharged by the payer, rather than by the debtor, whether or not the payment have been discharged by the latter?"	Subrogation - Memo # 576 - C - LCDOCX	R05S-000285751-R05S-000285752	SA, Sub	0.72	0	1	1	1	

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644	Waskov, Marella, 269 Conn. 527	36+1	"The law has recognized two types of subrogation: conventional, and legal or equitable." 734 Jt. 2d 595, Subrogation: 2, 1374 and 1995 Sup.). Conventional subrogation can take effect only by agreement and has been said to be synonymous with assignment. It occurs where one having no interest or any relation to the matter pays the debt of another, and by agreement is entitled to the rights and securities of the creditor so far as they relate to the debt paid. The law has also recognized a matter of contract. It does not arise from any contractual relationship between the parties, but takes place as a matter of equity, with or without an agreement to that effect. The object of (legal or equitable) subrogation is the prevention of injustice. It is designed to promote and to accomplish justice, and is the mode which equity adopts to compel the ultimate payment of a debt by one who, in justice, equity, and good conscience, should pay it. As now applied, the doctrine of (legal or equitable) subrogation is designed to prevent one person, not being a mere volunteer or intruder, pays a debt for which another is primarily liable, and which in equity and good conscience should have been discharged by the latter." (Citations omitted; internal quotation marks omitted) Westchester Fire Ins. Co. v. Allstate Ins. Co., 238 Conn. 362, 37071.672 A.2d 939 (1996).	The object of legal or equitable subrogation is the prevention of injustice; it is designed to promote and to accomplish justice, and is the mode which equity adopts to compel the ultimate payment of a debt by one who, in justice, equity, and good conscience, should pay it."	"Legal or equitable subrogation designed to promote and to accomplish justice, and is the mode that equity adopts to compel the ultimate payment of a debt by one who, in justice, equity and good conscience should pay it?"	Subrogation - Memo 272 - AME C.docx	R05-003294762-R055-003324764	Condensed SA	0.81	0	1	0	1	9,029
645	Salomon S.A. v. Scott USA Ltd. P-Ship, 117 F.R.D. 320	2+421	A district court may, in its discretion, defer or abate proceedings where another suit, involving identical issues, is pending in either a federal or state court, and where it would be duplicative, uneconomical, and vexatious to proceed otherwise. Blinder, Robinson & Co., Inc. v. U.S.E.C.C. 692 F.2d 102, 105 (10th Cir. 1982). Moreover, the court has broad discretion on such questions of severance. Holbein v. Heritage Mut. Ins. Co., 130 F.3d 75 (D.Wis. 1998).	District court may, in its discretion, defer or abate proceedings where another suit involving identical issues is pending in either federal or state court and it would be duplicative, uneconomical, and vexatious to proceed otherwise, and court has broad discretion in questions of severance. Fed.Rules Civ.Proc.Rule 21, 28 U.S.C.A.	"Can a court in its discretion defer or abate proceedings, where another suit involving identical issues is pending either in federal or state court?"	Abatement and Revival- Memo 5 - VP.docx	R05-003295044-R055-003295045	Order SA	0.28	1	0	0	1	1
646	Brown v. Wood, 451 So. 2d 569	20+97	Ownership of immovable property under record title may be acquired and superseded by ownership acquired under a prescriptive title. Under the general code provisions on acquisitive prescription, a possessor lacking good faith and/or just title may acquire prescriptive title to land by corporally possessing a tract for 30 years with intent to possess as owner, but only when possession is continuous, uninterrupted, peaceable, public and unequivocal, and only as to such immovable property as is actually possessed. Alternatively, titleholder may acquire more and than his title to the tract by interrupting the possession of another person without interruption and within visible bounds, and may attain 30 years' possessory period, which is necessary to perfect prescriptive title in absence of good faith and just title, by taking on possession of his ancestor in title. USA-C.C. arts. 794, 3424, 3441, 3442, 3476, 3486, 3487, 3488.	Under general code provisions on acquisitive prescription, possessor lacking good faith or just title may acquire prescriptive title to land by corporally possessing tract for 30 years with intent to possess as owner, but only when possession is continuous, uninterrupted, peaceable, public and unequivocal, and only as to such immovable property as is actually possessed. Alternatively, titleholder may acquire more and than his title to the tract by interrupting the possession of another person without interruption and within visible bounds, and may attain 30 years' possessory period, which is necessary to perfect prescriptive title in absence of good faith and just title, by taking on possession of his ancestor in title. USA-C.C. arts. 794, 3424, 3441, 3442, 3476, 3486, 3487, 3488.	Can the ownership of immovable property under record title be acquired and superseded by ownership acquired under prescriptive title?	OO 3866.docx	LEGALCASE-00115862-LEGALCASE-00115863	SA, Sub	0.36	0	0	1	1	1
647	Hargus v. Ferocious & Impetuous, 340 F.3d 133	16+17.1	When a party seeks to invoke federal admiralty jurisdiction over a tort claim, the claim must satisfy conditions both of location and of subject matter. Dredge & Dock Co., 513 U.S. 527, 534, 115 S. Ct. 1043, 130 L. Ed.2d 1024 (1995). The location aspect is satisfied if "the tort occurred on navigable water" or "the injury suffered on land was caused by a vessel on navigable water." Id. The connection aspect is a conjunctive two-part inquiry. First, we "must" assess the general features of the type of incident involved "to determine whether the incident has "a potentially disruptive impact on maritime commerce." 7 Id. (quoting Sison, 497 U.S. at 384 n.2, 385). Federal admiralty jurisdiction is only proper when the location test and both prongs of the connection test are satisfied. Id.	The connection aspect of the test to determine whether a district court has federal admiralty jurisdiction over a tort claim is a conjunctive two-part inquiry. First, we "must" assess the general features of the type of incident involved "to determine whether the incident has a potentially disruptive impact on maritime commerce, and second, the court must determine whether the general character of the activity giving rise to the incident shows a substantial relationship to traditional maritime activity. 28 U.S.C.A. § 1333(1).	How can federal admiralty jurisdiction be invoked over a tort claim?	Admiralty Law- Memo 31 - JS.docx	R05-003285462-R055-003285464	SA, Sub	0.51	0	0	1	1	1
648	Expos Scripts v. Argon D. 3d 4695	25+213(5)	A district court's denial of a motion for stay pending arbitration under 9 U.S.C. § 10 is not reversible error. 155 S.Ct. 1391, 359 U.S. 27, 30 (2d Cir. 2003); Riley Mfg. Co., Inc. v. Anchor Glass Container Corp., 157 F.3d 775, 779 (10th Cir. 1998). In re Complaint of Hombeck Offshore (1994) Corp., 981 F.2d 752, 754 (5th Cir. 1993); see also Edelein v. XM Satellite Radio Holdings, Inc., 483 F.3d 555, 560 (8th Cir. 2007) (arbitrability of dispute based on contract interpretation is a legal question reviewed de novo). Unlike our review of a motion to dismiss, however, we need not accept either party's allegations as true but must accept the facts alleged in the complaint as true. The district court has offered sufficient proof to "satisfy" [the court] that the issue involved... is referable to arbitration under such an agreement." 9 U.S.C. § 3. If so, the motion for a stay pending arbitration should be granted.	District court's denial of motion for stay pending arbitration is reviewed under the standard of abuse of discretion. The district court's denial of a motion to stay pending arbitration has offered sufficient proof to satisfy court that issue involved is referable to arbitration under written arbitration agreement. 9 U.S.C.A. § 3.	What standard of review is used by the court when hearing the district court's denial of a motion to stay pending arbitration?	OO 10208.docx	LEGALCASE-00118830-LEGALCASE-00118831	Order SA, Sub	0.61	1	0	1	1	1

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Between Original Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
649	Kent Cty. Rd. Comm'n v. Picking, 170 Mich. App. 222	1.46+22	Under MEPA, the trial court must conduct a dual inquiry to determine if a prima facie showing of impairment or destruction of a natural resource is shown. (1) whether the natural resource is involved and whether impact of activity on environment rises to level of impairment to justify trial court's intervention. M.C.L.A. § 691.1201 et seq.	Under Michigan Environmental Protection Act, trial court must conduct dual inquiry to determine if prima facie showing of pollution, impairment or destruction of a natural resource is shown, and whether natural resource is involved and whether impact of activity on environment rises to level of impairment to justify trial court's intervention. M.C.L.A. § 691.1201 et seq.	"How does the trial court determine if a prima facie showing of pollution, impairment, or destruction of a natural resource has been made?"	000928.docx	LEGALISE-00118243-LEGALISE-00118244	SA, Sub	0.75	839 0	15,344 0	14,873 1	21,876 1	9,079
650	United Fruit Co. v. Dept of Labor & Indus., 344 F.2d 172	83+10	The fact that an employer working within the State of Pennsylvania is engaged in interstate commerce is not determinative of whether it is outside the range of the Workmen's Compensation Act, which applies, section 301, 77 P.S. § 1, "to all accidents occurring within this Commonwealth." It is well settled that, in the absence of federal legislation on the subject, a state may, without violating the commerce clause of the federal constitution, Act. 1, "§ 8, cl. 3, legislate concerning relative rights and duties of employers and employees while within its borders, although engaged in interstate commerce. Valley Steamship Co. v. United Fruit Co., 333 U.S. 59, 68 S.Ct. 1271, 93 L.Ed. 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.	"In the absence of congressional or federal legislation on the subject, the state may, without violating the commerce clause of the federal constitution, legislate concerning relative rights and duties of employers and employees while within the state's borders, although engaged in interstate commerce?"	001371.docx	LEGALISE-00118162-LEGALISE-00118163	SA, Sub	0.57	0	0	1	1	1	1
651	Gulfport City ex rel. Holt v. Pickett, 151 N.C. App. 693	366+1	The doctrine of subrogation is one of equity and benevolence, and, like contribution and other similar equitable rights, was adopted from the civil law, and its basis is the doing of complete, essential and perfect justice between all the parties without regard to form, and its object is the prevention of injustice.	The doctrine of subrogation is one of equity and benevolence, and, like contribution and other similar equitable rights, was adopted from the civil law, and its basis is the doing of complete, essential, and perfect justice between all the parties without regard to form, and its object is the prevention of injustice.	"Is the basis of subrogation the doing of complete, essential, and perfect justice between all the parties without regard to form, and its object is the prevention of injustice?"	Subrogation - Memo # 450 - C - NO.docx	RCS5-00328508-RCS5-00328509	Condensed, SA	0.64	0	1	0	1	
652	Dominick v. Garrett, 276 Pa. Super. 18	366+2	Subrogation is an equitable doctrine involving the right of legal substitution and may take place with or without contractual agreement between the parties. First National Bank of Ashley v. Heilly, 165 Pa. Super. 168, 67 A.2d 671 (1949). It is granted as a means of placing the ultimate burden of a debt upon the one who in good conscience ought to pay it. Topicki v. Universal South Side Autos, Inc., 407 Pa. 359, 180 A.2d 444 (1962). Subrogation is appropriate when the party seeking it has a debt or obligation that is primarily payable from the funds of another. Anderson v. Greenville Borough, 442 Pa. 11, 273 A.2d 512 (1971). The doctrine, however, will not be invoked to protect mere volunteers. Beck v. Belter, 146 Pa. Super. 114, 22 A.2d 90 (1941). "A mere volunteer or intermeddler who, having no interest to protect, without any legal or moral obligation to pay ... pays the debt of another is not entitled to subrogation, the payment in his case absolutely extinguishing the debt. The payer must have acted on compulsion and is only in cases where the payment of the debt will be a benefit to him that he is entitled to subrogation. The debt must be payable from the funds of another in default or is compelled to pay in order to protect his own interests, or by virtue of legal process, that equity substitutes him in the place of the creditor without any agreement to that effect; in other cases the debt is absolutely extinguished." Home Owners' Loan Corp. v. Cruise, 351 Pa. Super. 259, 262, 30 A.2d 330, 331 (1963), quoting, 60 C.J. § 27 at 716.	Subrogation is granted as a means of placing the ultimate burden of a debt on the one who in good conscience ought to pay it and is generally applicable when one pays out of his own funds a debt or obligation that is primarily payable from the funds of another.	Is subrogation an equitable doctrine involving the right of legal substitution which is granted as a means of placing the ultimate burden of a debt upon the one who in good conscience ought to pay it and is generally applicable when one pays out of his own funds a debt or obligation that is primarily payable from the funds of another?	Subrogation - Memo # 489 - C - SA.docx	RCS5-00328369-RCS5-00328371	SA, Sub	0.83	0	0	1	1	

ROW	Judicial Opinion	WIKS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences	
653	Air Pegasus of D.C. v. United States, 24 F.3d 1206	1408+1.1	"First, as a threshold matter, the court must determine whether the claimant has established a property interest for purposes of the Fifth Amendment." Am. Pelagic Fishing Co. v. United States, 379 F.3d 1363, 1365 n.1 (D.C. Cir. 2005) (en banc). The court also noted that because "only persons with a valid property interest at the time of the taking are entitled to compensation," Wyatt v. United States, 271 F.3d 1090, 1096 (Fed.Cir.2001). The protections of the Takings Clause apply to real property, see Lucas, 505 U.S. at 1019, 112 S.Ct. 2886, personal property, see Andrus v. Allard, 444 U.S. 51, 65, 100 S.Ct. 318, 62 L.Ed.2d 210 (1979), and intangible property, see Nadeau v. Monson Co., 200 F.3d 1001, 1004 (9th Cir. 2000). The Constitution does not itself create or define the scope of "property" interests protected by the Fifth Amendment. Instead, "existing rules and understandings" and "background principles" derived from an independent source, such as state, federal, or common law, define the dimensions of the requisite property rights for purposes of establishing a cognizable taking." Matrisans, 342 F.3d at 1352 (citing Lucas, 505 U.S. at 1030); 112 S.Ct. 2889; see also Am. Radiator & Supply Co. v. United States, 251 F.3d 1334, 1340 (Fed.Cir.2003).	The Constitution does not itself create or define the scope of property interests protected by the Fifth Amendment; instead, existing rules and understandings and background principles derived from an independent source, such as state, federal, or common law, define the dimensions of the requisite property rights for purposes of establishing a cognizable taking, U.S.C.A. Const Amend. 5.	What defines the dimensions of the requisite property rights for purposes of establishing a cognizable taking?	017446.docx	LEGALBASE-00122096- LEGALBASE-00122098	15_344	21,876	1	839	0	0		9,029
										0.72	0	1			
654	In re LW, 362 Ill. App. 3d 1106	307A+3	Ned, we must address the standard of review to be used to consider the evidentiary issue in this case. When the trial court granted the Public Guardian's motion in limine and excluded the fitness findings in LW's findings, disposition orders which would support Oscar H.'s claim of incompetency, it was acting within its discretion. In ruling in limine is a pretrial motion that seeks an order excluding inadmissible evidence and prohibiting questions concerning such evidence, without the necessity of having the questions asked and objections thereto made in front of the jury. People v. Williams, 188 Ill.2d 365, 368, 242 Ill.Dec. 260, 721 N.E.2d 539 (1999). Generally, evidentiary motions, such as motions in limine, are addressed to the trial courts' inherent power to admit or exclude evidence, and reviewing courts will not disturb a trial court's ruling on a motion in limine unless it is manifestly erroneous. Williams, 188 Ill.2d at 369, 242 Ill.Dec. 260, 721 N.E.2d 539; citing People v. Holman, 257 Ill.App.3d 1031, 1033, 196 Ill.Dec. 457, 630 N.E.2d 154 (1994); People v. Jordan, 205 Ill.App.3d 116, 121, 150 Ill.Dec. 415, 562 N.E.2d 1238 (1990). People v. Escobar, 168 Ill.App.3d 30, 43, 118 Ill.Dec. 736, 522 N.E.2d 151 (1988), and People v. Williams, 60 Ill.App.3d 4529, 532 F.3d 1811 Dec. 214, 377 N.E.2d 967 (1978); see also People v. Harvey, 241 Ill.2d 368, 392, 286 Ill.Dec. 24, 913 N.E.2d 81 (2009). However, a motion in limine is not subject to the same standard of review as a motion for summary judgment. People v. Moore, 207 Ill.2d 688, 75, 278 Ill.Dec. 36, 797 N.E.2d 631 (2003); Williams, 188 Ill.2d at 369, 242 Ill.Dec. 260, 721 N.E.2d 539. Where the question presented is one of law, a reviewing court determines it independently of the trial court's judgment. Moore, 207 Ill.2d at 75, 278 Ill.Dec. 36, 797 N.E.2d 631; Williams, 188 Ill.2d at 369, 242 Ill.Dec. 260, 721 N.E.2d 539; quoting In re Lawrence A., 172 Ill.2d 523, 536, 219 Ill.Dec. 36, 797 N.E.2d 631.	A motion in limine is a pretrial motion that seeks an order excluding inadmissible evidence and prohibiting questions concerning such evidence, without the necessity of having the questions asked and objections thereto made in front of the jury.	% a motion in limine is a pretrial motion that seeks an order excluding inadmissible evidence and prohibiting questions concerning such evidence, without the necessity of having the questions asked and objections thereto made in front of the jury?	024081.docx	LEGALBASE-00121833- LEGALBASE-00121841	0.9	0	1	0	1			
										0.65	0	1	0	1	
655	United States v. Labowitz, 251 F.2d 393	(68+11)	The briber statute itself deals explicitly with the element of criminal intent, making it a crime to offer money to any person acting for the United States "with intent to influence his decision or action on any matter before him in his official capacity or to induce him to do so or omit to do any act in violation of his lawful duty." 18 U.S.C. § 201. For present purposes the important point is that the statute states the essential elements of the offense. On the face of the statute, either an individual or an organization can be charged with the offense. If an individual will supply the capability which the statute requires the reason for this is obvious: it is a major concern of organized society that the community have the benefit of objective evaluation and unbiased judgments on the part of those who participate in the making of official decisions. Therefore, society deals sternly with bribery which would substitute the will of an interested person for the judgment of a public official in the controlling factor in official decision. This statute plainly may be applied to individuals or organizations without interference with the normal and proper functioning of government.	Under statute making it a crime to offer money to any person acting for the United States with intent to influence his decision or action on any matter before him in his official capacity or to induce him to do so or omit to do any act in violation of his lawful duty, either an intention to influence official behavior or an intention to induce unlawful action will supply required culpability. 38 U.S.C.A. § 201.	Does an intention to influence official behavior or an intention to induce unlawful action supply the culpability which the public official bribery statute requires?	011027.docx	LEGALBASE-00122121- LEGALBASE-00122120	0.65	0	1	0	1			
										0.55	0	1	1	1	
656	Ramirez & Ferand Chili Co. v. Las Palmas Food Co., 146 F. Supp. 594	22+134	Also inherent in national sovereignty is the power to impose, even upon foreigners owing no allegiance, liability for acts done abroad which proximately cause damage within the territorial limits of sovereign power committed within its own territory." Banco Nacional del Comercio Exterior, S.A. v. La Caixa de Pensiones, 644 F.2d 1304, 1309 (CA-1, 1980), cert. denied, 454 U.S. 1103 (1981). See also Restatement (Third) of Foreign Relations Law "§ 481(b) (1987) (explaining American courts should not invalidate the "acts of a governmental character done by a foreign state within its own territory and applicable there"). Courts must dismiss under the act of state doctrine when resolution of a suit would require the courts of this country to declare invalid and ineffective as "a rule of decision for the courts of this country" the official act of a foreign sovereign." V.S. Kipparick & Co., Inc. v. Envtl. Control Systems, Inc., 630 F.2d 1191, 1194 (CA-2, 1980), cert. denied, 450 U.S. 1000 (1981). (citing Restat. v. Am. Metal Co., 246 U.S. 304, 38 S.Ct. 312, 62 L.Ed. 733 (1918)).	The power to impose, even upon foreigners owing no allegiance, liability for acts done abroad which proximately cause damage within territorial limits of sovereignty is inherent in national sovereignty.	Is there inherent power national sovereignty to impose liability for foreigners for acts done abroad which proximately cause damage within the territorial limits of the sovereignty?	019964.docx	LEGALBASE-00122879- LEGALBASE-00122881	Condensed, SA	0.55	0	1	1	1		
										0.75	0	1	0	1	
657	Gross v German Foundry Indus. Initiative, 456 F.3d 383	22+1342	"Inquiry into the validity of the public acts is recognized foreign sovereign power committed within its own territory." Banco Nacional del Comercio Exterior, S.A. v. La Caixa de Pensiones, 644 F.2d 1304, 1309 (CA-1, 1980), cert. denied, 454 U.S. 1103 (1981). See also Restatement (Third) of Foreign Relations Law "§ 481(b) (1987) (explaining American courts should not invalidate the "acts of a governmental character done by a foreign state within its own territory and applicable there"). Courts must dismiss under the act of state doctrine when resolution of a suit would require the courts of this country to declare invalid and ineffective as "a rule of decision for the courts of this country" the official act of a foreign sovereign." V.S. Kipparick & Co., Inc. v. Envtl. Control Systems, Inc., 630 F.2d 1191, 1194 (CA-2, 1980), cert. denied, 450 U.S. 1000 (1981). (citing Restat. v. Am. Metal Co., 246 U.S. 304, 38 S.Ct. 312, 62 L.Ed. 733 (1918)).	Courts must dismiss under the "act of state doctrine" when resolution of a suit would require the court to declare invalid and ineffective as a rule of decision for the courts of this country the official act of a foreign sovereign?	Must courts dismiss under the act of state doctrine when resolution of a suit would require the court to declare invalid and ineffective as a rule of decision for the courts of this country the official act of a foreign sovereign?	020024.docx	LEGALBASE-00123592- LEGALBASE-00123593	Condensed, SA	0.75	0	1	0	1		

[illegible]

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
664	Beanal v. Freport-McMillan, 369 F. Supp. 362	24-785	To determine whether state action has been alleged, the court considers the extent of state involvement in the alleged conduct. The court considers the "symbolic relationship" between PREPORT's employees, within its security force, and the Indonesian military. The requirement that those individuals act in concert with the state is not satisfied. The court also considers the Indonesian Opposition Memorandum Record Doc. No. 81. Though this argument lends some insight into a Plaintiff's theory of state action, Plaintiff cannot assign his complaint through his opposition memorandum. The facts forming a basis for state action must be discernible from the face of the complaint.	To determine whether state action has been alleged in action under the Alien Tort Statute for human rights violations, district court considers text of 5 U.S.C. 42 U.S.C.A. 5 1985. Restatement (Third) of Foreign Relations Law of the United States § 207 comment.	"To determine whether state action has been alleged in action under the Alien Tort Statute for human rights violations, district court considers text of 5 U.S.C. 42 U.S.C.A. 5 1985. Restatement (Third) of Foreign Relations Law of the United States § 207 comment."	020839.docx	LEGALASE-00124365-LEGALASE-00124366	Condensed SA, Sub	0.69	839	15,344	14,873	21,876	9,029
						020839.docx	LEGALASE-00124365-LEGALASE-00124367	Condensed SA, Sub	0.66	0	1	0	1	1
665	Barragan v. Banco BCI, 188 Cal. App. 3d 283	22-142	The act of state doctrine precludes judicial inquiry into the validity of public acts of foreign sovereigns committed within their own territory. (Banco Nacional de Cuba v. Sabbatino (1964) 376 U.S. 398, 401, 84 S.Ct. 923, 926, 11 L.Ed.2d 804.) Court adjudications involving the legality of actions by a foreign state on its own soil might embarrass the executive branch of government in its conduct of foreign relations. (Alfred Dunhill of London, Inc. v. Cuba (1976) 425 U.S. 682, 697, 965 Ct. 1854, 1863, 48 L.Ed.2d 930.) However, the doctrine does not prevent judicial resolution of commercial consequences arising from a foreign government's public acts, (Arango v. Guaman Travel Advisors Corp., supra, 621 F.2d at pp. 1380'93; see also National American Corp. v. Fed. Rep. of Nigeria (S.D.N.Y.1978) 448 F.Supp. 622, 639'94.) Nor does the doctrine apply to commercial acts of nationalized corporations. (See e.g., Alfred Dunhill of London, Inc. v. Cuba, supra, 425 U.S. 682, 965 Ct. 1854.)	Act of state doctrine precludes judicial inquiry into validity of public acts of foreign sovereigns committed within their own territory. However, doctrine does not prevent judicial resolution of commercial consequences arising from foreign government's public acts or apply to commercial acts of nationalized corporations.	Does the act of state doctrine prevent judicial resolution of commercial consequences arising from a foreign government's public acts or apply to commercial acts of nationalized corporations?	020897.docx	LEGALASE-00124656-LEGALASE-00124657	Condensed SA	0.66	0	1	0	1	1
						020897.docx	LEGALASE-00124656-LEGALASE-00124657	SA, Sub	0.66	0	0	1	1	1
666	Teagarden v. United States, 42 Fed. Cl. 252	1489-2.1	The element of causation poses an even greater obstacle for plaintiffs to overcome. Although plaintiffs assert that the concentration of fire suppression manpower and equipment in areas of high priority manifested "an intent on the part of the defendant to do an act the natural consequence of which was to take [plaintiffs'] property," PKE Br. filed Sept. 4, 1958, at 116, plaintiffs cannot escape the inconvertible fact that the Unta Flat Fire, not the Forest Service, caused the destruction of plaintiffs' property. In the context of a claim for inverse condemnation, damages resulting from "a random event induced more by an extraordinary natural phenomenon than by Government interference" cannot rise to the level of a compensable taking. "even if there is permanent damage to property partially attributable to Government activity." Berenholz v. United States, 1 C.Cl. 620, 626 (1982) (quoting Wilford v. United States, 202 C.Cl. 616, 622, 480 F.2d 1326, 1329 (1973)).	In the context of a claim for inverse condemnation, damages resulting from a random event induced more by an extraordinary natural phenomenon than by government interference cannot rise to the level of a compensable taking, even if there is permanent damage to property partially attributable to government activity. U.S.C.A. Const. Amend. 5.	"Can damages resulting from a random event induced more by Government interference, rise to the level of a compensable taking?"	Eminent Domain - Memo 285-05.docx	R055-003300000-ROSS-003300001	SA, Sub	0.66	0	0	1	1	1
						060651.docx	LEGALASE-00127504-LEGALASE-00127505	SA, Sub	0.51	0	0	1	1	1
667	Florida Power & Light Co. v. Sps. Council U of Int'l Bhd. of Elec. Workers, AFL-CIO, 307 So.2d 189	13-465	With reference to earlier rules with like provision our courts have said that where, because of facts developing after suit began, certain relief desirable, a supplemental bill should be filed. Gracy v. Fielding, 83 Fla. 388, 91 So.373 (1922). In the absence of proper supplemental bill filed after permission duly granted, the right of complainant to the relief prayed must be determined upon the facts existing at the time the original bill was filed. Meredith, Long, 96 Fla. 719, 119 So.114 (1928).	In absence of a proper supplemental bill filed after permission duly granted, right of complainant to relief prayed must be determined upon facts existing at time original bill was filed. 30 West's 5.S.A. Rules of Civil Procedure, rule 1.150(a, d).	"In absence of a proper supplemental bill filed after permission duly granted, must the right of the complainant to the relief prayed be determined upon facts existing at the time the original bill was filed?"	060651.docx	LEGALASE-00127504-LEGALASE-00127505	SA, Sub	0.51	0	0	1	1	1
						Venue - Memo 135-SB.docx	ROSS-002300153-ROSS-003200064	SA, Sub	0.75	0	0	1	1	1
668	First Fed. Sav. & Loan Ass'n of Hamiltonv. Haley, 377 So. 2d 1082	40-145.1	The second issue contends that the Circuit Court of Franklin County had no authority to order First Federal to satisfy a mortgage on land located in Winston County. It relies on 6-3-2, Code of Alabama (1973), that statute is a venue statute relating to equitable proceedings against individuals when the subject matter of the action is real estate. It has no limitation upon the general state-wide jurisdiction of a circuit court. Ala. Const. amend. 326, § 6.04 (1973). "Subject matter" as used in the statute has been defined as "the nature of the cause of action and of the relief sought." 308 Ala. 100, 101 (1973). The statute does not require ancillary equitable relief of requiring record satisfaction of a mortgage relates neither to venue nor to jurisdiction. The circuit court of Franklin or any county generally has power to enforce its in personam orders relating to delivery, possession or title of real or personal property no matter where the same may lay in the state. Harrison v. Mock, 10 Ala. 385 (1846); Rule 70, A.R.P.	Venue statute, which relates to equitable proceedings against individuals when the subject matter of the action is real estate, has no limitation upon the general statewide jurisdiction of a circuit court. Code of Ala. 1975, § 6-3-2, Const. 1901, Amend. 328, § 6.04.	"Does a venue statute, which relates to equitable proceedings against individuals against individuals when the subject matter of the action is real estate, have any limitation upon the general statewide jurisdiction of a circuit court?"	Venue - Memo 135-SB.docx	ROSS-002300153-ROSS-003200064	SA, Sub	0.75	0	0	1	1	1
						040493.docx	LEGALASE-00127466-LEGALASE-00127468	Condensed SA	0.76	0	1	0	1	1
669		41-34-11	The workers' compensation system shields these parties from such actions. (Privette v. Superior Court, supra, 5 Cal.4th at p. 701, 21 Cal.Rptr.2d 72, 854 P.2d 721; Lab. Code, § 3864.) That is because the workers' compensation scheme operates regardless of fault and achieves the identical purposes that underlie recovery under the peculiar risk doctrine by ensuring swift, sure compensation for workplace injuries. (Privette, supra, at p. 697, 21 Cal.Rptr.2d 72, 854 P.2d 721.) The system spreads such risks and the associated costs of workplace injuries in exchange for swift settlement to workers' regardless of fault. (Ibid., cf. Gambaou v. Conti Trucking, Inc. (1993) 19 Cal.App.4th 663, 23 Cal.Rptr.2d 564, in which trucking company, a common carrier, held liable on grounds of nonnegligence duty for injury to third party motorist.)	Workers' compensation scheme operates regardless of fault and achieves identical purposes that underlie recovery under peculiar risk doctrine by ensuring swift, sure compensation for workplace injuries.	"Does the workers' compensation scheme operate regardless of fault and achieve identical purposes that underlie recovery under the peculiar risk doctrine by ensuring swift, sure compensation for workplace injuries?"	040493.docx	LEGALASE-00127466-LEGALASE-00127468	Condensed SA	0.76	0	1	0	1	1

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ROW	Judicial Opinion	WIMS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Bates Number	Headnote	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences	
676	321 Henderson Receivables Origination LLC v. Remco, 172 Cal. App. 4th 305	307A+517-1	Dismissal Under Code of Civil Procedure Section 881, 12 Code of Civil Procedure section 881, subdivision (b), provides that "[a]n action may be dismissed at any time by the court without prejudice, by agreement of the parties or by stipulation of the parties." The court held that the statutory exceptions, a plaintiff's right to a voluntary dismissal pursuant to subdivision 1 appears to be absolute. (Citations.) Upon the proper exercise of that right, a trial court would thereafter lack jurisdiction to enter further orders in the dismissed action." (Wells v. Marina City Properties, Inc. [1981] 29 Cal.3d 781, 784-176 Cal.Rptr. 104, 632 P.2d 221 [Wells].) "Alternatively stated, voluntary dismissal of an entire action terminates the court's jurisdiction over the case, so that no further judicial action, except for the limited purpose of awarding costs and statutory attorney fees. (Citations)." (Gogri v. Jack in the Box, Inc. [2008] 166 Cal.App.4th 255, 261, 82 Cal.Rptr. 3d 629 [Gogri].) "An order by a court lacking subject matter jurisdiction is void. (Citation)." (Kyle v. Carmon [1999] 71 Cal.App.4th 901, 909, 84 Cal.Rptr.2d 308 [Kyle].) Where the facts are undisputed, we review de novo the superior court's denial of a request for judgment under Code of Civil Procedure section 861. (Gogri, supra, 166 Cal.App.4th at p. 264, 82 Cal.Rptr.3d 629).	Voluntary dismissal of an entire action deprives the court of both subject matter and personal jurisdiction in that case, except for the limited purpose of awarding costs and statutory attorney fees. Wells v. Marina City Properties, Inc., 29 Cal.3d 781, 784-176 Cal.Rptr. 104, 632 P.2d 221.	"Does a voluntary dismissal of an entire action deprive the court of both subject matter and personal jurisdiction in that case, except for the limited purpose of awarding costs and statutory attorney fees?"	LEGALCASE-00132303-LEGALCASE-00132304	SA, Sub	0.83	839 0	15_344 0	34,873 1	21,876 1	9,029	
677	Appeal of Boeing Co., 261 Kan. 508	371+2001	"A distinction exists between general taxes and assessments for special or local improvements. The former are exactions placed upon citizens by taxing authorities for support of government while "special assessments" are imposed upon property within limited area for payment of special or local improvements."	"General taxes" are exactions placed upon citizens by taxing authorities for support of government while "special assessments" are imposed upon property within limited area for payment of special or local improvements."	Tuition - Memo # 303 - C - Ct.docx	ROSS-003327336-ROSS-003327337	SA, Sub	0.6	0 0	0 0	1 1	1 1		
678	State ex rel. Curran-Biggs v. Withhaus, 358 Mo. 1088	307A+431	"It was not without reason that safeguards were written into the law to preclude unwarranted excursions into the privacy of a litigant's papers. Article I, Section 15, Constitution of Missouri, 1945, Mo.A.S.A., and Section 86, supra. But under Section 86 the court risks its vested with the discretion to whether he "may order" the production of the requested documents which are not privileged, and we may not interfere with that discretion unless it appears the same was abused or that documents were withheld from discovery for reasons other than those permitted by Rule 36(b). See, e.g., Section 86, supra. State ex rel. St. Louis Union Trust Co. v. Sarnoff, 351 Mo. 111, 171 SW 2d 569. Under the guise of discretion the trial judge cannot authorize a mere "fishing expedition", but Section 86 emp[owers] modern discovery procedures and the modern view of the administration of justice, authorizes a limited invasion of certain rights in a guarded and limited procedure. Discovery statutes are intended to protect the soundness of judgments rendered in nature and are designed to be applied liberally. Burden has been placed upon the party seeking discovery to establish the probable success of the search and seizures or the invasion of the right of privacy. 27 C.J.S. Discovery," 69, PAGE 102.	Discovery statutes are intended to assist in the administration of justice are remedial in nature, and are to be liberally construed but they cannot be liberally construed in contravention of inhibitions respecting unreasonable searches and seizures or the invasion of the right of privacy? V.A.M.S.5.510.030; V.A.M.5.Cmnt.1946, art. 1, § 15.	Q77210.docx	LEGALCASE-00132572-LEGALCASE-00132573	SA, Sub	0.73	0 0	0 0	1 1	1 1		
679	Lohr v. U.Sway Adams, 971 So. 2d 912	307B+517-1	The relevant judicial division of this trial court of the power to hear any civil matters. See Bland Estate v. Abou-Saleh, 56 So. 2d 341, 164 Fla. Supp. 360 So.2d 618 (Fla.1978). As the Court stated in Vista: The right to dismiss one's own lawsuit during the course of a trial is guaranteed by Rule 1.420(a), entitling a plaintiff with unilateral authority to block action favorable to a defendant which the trial judge might be disposed to approve; the effect is to remove completely from the court's consideration the power to enter an order, equivalent in all respects to a deprivation of jurisdiction. West's F.S.A. ROP Rule 1.429(a).	The right to dismiss one's own lawsuit during the course of a trial is guaranteed by Rule 1.420(a), entitling a plaintiff with unilateral authority to block action favorable to a defendant which the trial judge might be disposed to approve; the effect is to remove completely removing it from the courts' consideration?	Q77594.docx	LEGALCASE-00133862-LEGALCASE-00133863	Condensed SA, Sub	0.32	0 1	1 1	1 1	1 1		
680	Shahreen v. CIV. Of Matthews, 265 Va. 462	307A+486	Under the first prong of this two-part test, the moving party has the burden to demonstrate that withdrawal or amendment of an admission will "subserve" the presentation of the merits of the action. Gary Mun. Airport Auth. v. Peters, 550 N.E.2d 828, 831 (Ind.App.1990); Farm Credit Administration v. American Bank Note Co., 550 F.2d 1011, 1014 (CA-10, 1977). The third condition would practically limit any amendment or withdrawal of the admissions of the case. "Haddley v. United States, 46 F.3d 1345, 1348 (9th Cir.1995); accord Peter, 297 F.3d at 1266; Prushis, 18 F.3d at 640; ADM Agri-Industries, Ltd. v. Harvey, 200 F.R.D. 467, 471 (M.D Ala.2001); Westminster Indv. Triumph Motorcycle Corp., 71 F.R.D. 192, 193 (D.Conn.1976); Gary Munic. Airport, 550 N.E.2d at 831; Farm Credit, 474 U.S. at 462 n.10.	First prong of two-part test governing a trial court's discretion to permit the withdrawal or amendment of matters admitted pursuant to requests for admissions, requiring the moving party to demonstrate that withdrawal or amendment of an admission will "subserve the presentation of the merits of the action." A satisfied finding regarding the third condition would practically eliminate any presentation in the merits of the case. Sup.Ct Rules, Rule 4.1(1b).	Q79002.docx	LEGALCASE-00134007-LEGALCASE-00134008	Condensed SA, Sub	0.42	0 1	1 1	1 1	1 1		
681	TBF Fin v. Shaw, 213 S.W.3d 231	307A+483	A party who fails to respond to requests for admissions admits those matters. No further sanction is necessary or available to the proponent, who instead can use the admissions in dispositive motions or at trial, and a court must consider such admissions in deciding a motion for a directed verdict. V.A.M.R. 59. 01.	A party who fails to respond to requests for admissions admits those matters, and no further sanction is necessary or available to the proponent, who instead can use the admissions in dispositive motions or at trial, and a court must consider such admissions in deciding a motion for a directed verdict. V.A.M.R. 59. 01.	Pretail Procedures- Memo # 1535- C - SK.docx	ROSS-003290480-ROSS-003290481	SA, Sub	0.67	0 0	0 0	1 1	1 1		

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Between Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
682	Lawyers Asst. of St. Louis v. City of St. Louis, 284 S.W.2d 976	2639-959	Turning to the disputed ordinance, it states that it is "an ordinance imposing an earnings tax for general revenue purposes upon the holders of licenses and permits for the sale of goods and services for compensation earned after August 31, 1952. [Emphasis ours.] We recognize that the name, purpose, designation or character given by the legislature to a particular tax in the statute or ordinance imposing it is not conclusive upon the Court in determining the nature or purpose of the taxation. Yet it is entitled to due weight and consideration. In the final analysis it is for the Court to determine the purpose, nature and effect of a particular tax, regardless of its apparent legislative designation. 84	The name, purpose, designation or character given by legislative body to particular tax in statute or ordinance imposing it is not conclusive upon the court in determining nature and purpose of taxation? due weight and consideration; determination of purpose, nature and legislative designation.	"Is the name, purpose, designation or character given by legislative body to particular tax in statute or ordinance imposing it not conclusive upon the court in determining nature and purpose of taxation?"	Taxation - Memo# 335 - C.docx	ROSS-0030303164-KOSS-003303650	SA, Sub	0.59	839	15,344	14,873	21,876	9,079
										0	0	1	1	
683	Medina v. Raven, 492 S.W.2d 53	3074-486	The supreme court has held that the standards for withdrawing deemed admissions and for allowing a late summary-judgment response are the same. Carpenter v. Cimarron Hydrocarbons Corp., 98 S.W.3d 682, 687-88 (Tex. 2003) (quoting Wheeler, 157 S.W.2d 620, 621 (Tex. 1996) (per curiam)). "Undue prejudice depends on whether withdrawing an admission or filing a late response will delay trial or significantly hamper the opposing party's ability to prepare for it." Id. (quoting Brown v. Shroeter, supra, 98 S.W.3d at 682; see also Wal-Mart Stores, Inc. v. Deggs, 968 S.W.2d 354, 357 (Tex. 1998)) (per curiam)).	Undue prejudice to the nonmoving party that would preclude withdrawing deemed admissions depends on whether withdrawing an admission or filing a late response will delay trial or significantly hamper the opposing party's ability to prepare for it. (Tex. Civ. P. 136.2 (i)).	Will undue prejudice to the nonmoving party that would preclude withdrawing deemed admissions depend on whether withdrawing an admission or filing a late response delay trial or significantly hamper the opposing party's ability to prepare for it?	028522.docx	LEGAEASE-00134992-LEGAEASE-00134993	SA, Sub	0.74	0	0	1	1	
										0	0	1	1	
684	Harms v. Simkin, 322 S.W.2d 980	30+3911	The mere fact that an attorney withdraws from a case does not give a party an absolute right to a continuance. Annotation, 48 A.L.R.2d 1155, **, The decision to grant or deny a continuance is left to the discretion of the trial court, and, although that discretion is judicial in nature and reviewable on appeal, every impediment is in favor of the court's ruling. Savings Finance Corp. v. Blair, Mo.App., 280 S.W.2d 675, 676, 678. Whether there has been an abuse of discretion on the part of the court in directing that a trial proceed in the absence of an attorney for a party depends upon the particular facts and circumstances in the given case. Brown v. Shroeter, supra. According to the assignment judge's decision, the court's decision to grant a continuance was not an abuse of discretion in this case for the purpose of procuring continuances by the withdrawal of lawyers as the case was reached on the trial docket. Simkin had employed the same dilatory tactics in another case before the same judge. We have had a similar experience. After the case reached this court Simkin's Attorney X filed two motions for additional time to file a transcript on appeal. Attorney X then filed a motion to withdraw on the ground that the check which Simkin gave him for his fee had been returned for deposit to the wrong account. Simkin's Attorney Y then filed a motion to withdraw on the ground that Simkin had not made financial arrangements for Y's fee. Simkin, appearing pro se, made an application for additional time to prepare and file a brief. When we denied this, present counsel for Simkin entered his appearance. Two different, successive lawyers in the trial court; three different, successive lawyers in the appellate court; four withdrawals of counsel; at least three motions for additional time; and Attorney X who employed a tactic of the withdrawal of counsel to grant a continuance due to absence of counsel. Absence of counsel will not be a good cause for a continuance of the cause when called for trial, except in the discretion of the trial court, upon cause shown or upon matters within the knowledge or information of the judge to be stated in the record. TEX. R. CIV. P. 253. There is no showing in the record of any matters within the information or knowledge of the judge which show good cause for continuance.	Mere fact that an attorney withdraws from a case does not give a party an absolute right to a continuance and decision whether to grant or deny continuance on that ground rests largely in discretion of trial court; and, although that discretion is judicial in nature and reviewable on appeal, every impediment is in favor of court's ruling.	Does the fact that an attorney withdraws from a case give a party an absolute right to a continuance?	Pretrial Procedure - Memo # 3339 - C - No.docx	ROSS-0030303116-KOSS-003303518	Condensed SA	0.9	0	1	0	1	
										0	0	0	1	
685	Gendelshon v. Gendelshon, 668 S.W.2d 905	3074-715	The withdrawal of counsel is a dispositive event in the trial of a civil case. Trial judge to grant a continuance due to absence of counsel. Absence of counsel will not be a good cause for a continuance of the cause when called for trial, except in the discretion of the trial court, upon cause shown or upon matters within the knowledge or information of the judge to be stated in the record. TEX. R. CIV. P. 253. There is no showing in the record of any matters within the information or knowledge of the judge which show good cause for continuance.	Absence of counsel will not be a good cause for a continuance of the cause when called for trial except in discretion of trial court upon cause shown or upon matters within the knowledge or information of the judge to be stated in the record. Vernon's Ann. Texas Rules Civ. Proc., Rule 253.	Will absence of counsel not be a good cause for a continuance of the cause when called for trial except in discretion of trial court upon cause shown or upon matters within the knowledge or information of the judge to be stated in the record?	029538.docx	LEGAEASE-00135278-LEGAEASE-00135279	SA, Sub	0.47	0	0	1	1	
										0	0	1	1	
686	Ramirez v. Noble Energy, 521 S.W.3d 851	2284-1854)	When admissions are deemed as a discovery sanction to preclude presentation of the merits of this case, the deemed admissions "implicate the same due process concerns as other case-ending discovery sanctions." Marino, 355 S.W.3d at 632; Wheeler, 157 S.W.3d at 443 ("But when a party uses deemed admissions to try to preclude presentation of the merits of a case, the same due process concerns arise"). Thus, to establish that a party's judgment to use deemed admissions is not an abuse of discretion, the party must demonstrate "flagrant bad faith or callous disregard for the rules." Marino, 355 S.W.3d at 633; Wheeler, 157 S.W.3d at 443; see also TransAmerican Nat. Gas Corp. v. Powell, 811 S.W.2d 933, 938 (Tex. 1991) ("Sanctions which are so severe as to preclude presentation of the merits of the case should not be assessed absent a party's flagrant bad faith or counsel's callous disregard for the responsibilities of discovery under the rules.").	To substantiate a summary judgment based solely on merits-preclusive deemed admissions, the party relying upon the deemed admissions must demonstrate flagrant bad faith or callous disregard for the rules. Tex. R. Civ. P. 136.3.	"To substantiate a summary judgment based solely on merits-preclusive deemed admissions, must the party relying upon the deemed admissions demonstrate flagrant bad faith or callous disregard for the rules?"	028866.docx	LEGAEASE-00135553-LEGAEASE-00135554	SA, Sub	0.77	0	0	1	1	
										0	0	1	1	

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
694	Graefe & Graefe v. Beaver Hills Sub. Co., 653 P.2d 900	307A+750	At the conclusion of the trial, plaintiffs sought to amend their complaint to conform to the evidence presented at trial. (R. 100). Defendants opposed the amendment, claiming that it was not in the interests of justice to allow the amendment. The court granted the amendment, finding that the amendment was necessary to allow the plaintiffs to present their case. The court then granted summary judgment in favor of the plaintiffs.	Where evidence is admitted for limited purpose other than that for which it is later sought to be used, and where proposed amendment seeks to introduce an issue outside of the scope of the evidence already admitted, trial court does not err in refusing to allow amendment. Rules Civ.Proc., Rule 15(b).	Does a court err in refusing to allow an amendment where proposed amendment seeks to introduce an issue outside of the scope of the evidence already admitted by the adverse party?	021319.docx	LEGALASE-00139019-LEGALASE-00139020	SA, Sub	0.65	839	15,344	14,873	21,876	9,079
695	United States v. Nighn, 810 F.3d 348	63+1(1)	We follow the Supreme Court's direction in Skilling and look to "201(b) to give substance to the prohibition on honest-services fraud. In United States v. Skilling, 551 U.S. 681, 694 (2007), the Court stated that "201(b)(2) 'he has corruptly entered into a quid pro quo, knowing the purpose behind the payment he has agreed to induce or influence him in an official act, even if he has no intention of actually fulfilling his end of the bargain.' 18 U.S.C. § 201(b)(2)."	An official may be convicted of bribery if he has corruptly entered into a quid pro quo, knowing the purpose behind the payment he has agreed to induce or influence him in an official act, even if he has no intention of actually fulfilling his end of the bargain. 18 U.S.C. § 201(b)(2).	"If an official knows the purpose behind the payment he has agreed to receive is to induce or influence him in an official act, it is irrelevant whether he has no intention of performing the act."	Bribery - Memo #709 - C-18.docx	R055-003301644-R055-003301655	SA, Sub	0.66	0	0	1	1	
696	Lewis v. Clarke, 320 Conn. 706	307A+681	Depending on the record before it, a trial court ruling on a motion to dismiss for lack of subject matter jurisdiction pursuant to Practice Book § 30-31a(1) may decide that motion on the basis of: "(1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts." The court here decided the motion on the basis of the record at the time the motion was filed. (Citation omitted; internal quotation marks omitted.) Conboy v. State, 292 Conn. 642, 651, 574 A.2d 669 (2009).	Depending on the record before it, a trial court ruling on a motion to dismiss for lack of subject matter jurisdiction may decide that motion on the basis of: (1) the complaint alone, (2) the complaint supplemented by undisputed facts evidenced in the record, or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts. The court here decided the motion on the basis of the record at the time the motion was filed. (Citation omitted; internal quotation marks omitted.) Conboy v. State, 292 Conn. 642, 651, 574 A.2d 669 (2009).	"Depending on the record before it, can a trial court ruling on a motion to dismiss for lack of subject matter jurisdiction decide that motion on the basis of what?"	Pretrial Procedure - Cx.docx	R055-003316353	SA, Sub	0.19	0	0	1	1	
697	Eliff v. Texon Drilling Co., 146 Tex.575	260+92.49	It must be recognized that under the law of capture there is no liability for reasonable and legitimate drainage from the common pool. The landowner who drills a well to produce oil or gas from his land, and who drills another well to produce oil or gas from the same land, may produce, so long as he operates within his right and purpose of conservation statutes and orders of the Railroad Commission, and regulations are designed to afford each owner a reasonable opportunity to produce his proportionate part of the oil and gas from the entire pool and to prevent operating practices injurious to the common reservoir. In this manner, if all operators exercise the same degree of skill and diligence, each owner will recover from instances in his fair share of the common pool. The landowner who drills a well to produce oil or gas from the oil and gas in the landowner's common law right under our theory of absolute ownership of the minerals in place. But from the very nature of this theory the right of each landholder is qualified, and is limited to legitimate operations. Each owner whose land overlies the basin has a like interest, and each must of necessity exercise his right with some regard to the rights of others. No owner should be permitted to carry on his operations in reckless or lawless irresponsibility, but must submit to the operations of others who exercise their rights in a proper and reasonable manner. Wheeler, 157 Pa. 324, 274, 714, 717, 18 A. 37, 40 Sd.Rep. 736.	A landowner is privileged to sink as many wells as he desires on his land and to extract therefrom and appropriate all oil and gas that he may produce, so long as he operates within his right and purpose of conservation statutes and orders of the Railroad Commission.	Is a landowner privileged to sink as many wells as he desires upon his tract of land and extract therefrom and appropriate all the oil and gas that he may produce?	021660.docx	LEGALASE-00140881-LEGALASE-00140882	Condensed SA	0.82	0	1	0	1	1
698	Anderson Columbia v. Brown, 902 So. 2d 838	307A+36.1	We agree with our sister courts in holding that the discovery of an opposing party's legal costs is a matter best left to the sound discretion of the trial court. See, e.g., In re: Discovery, 902 So. 2d 838, 841 (Fla. 1st DCA, 2005). See also, In re: Discovery, 902 So. 2d 838, 841 (Fla. 1st DCA, 2005). As the Fifth District Court noted in Mangel: Florida has not yet adopted a hard and fast rule regarding the discovery and admission of opposing counsel's fees. This reflects the salutary view that the discovery may be justified in some cases but not in others and that it is a matter that should rest within the sound discretion of the trial court. 739 So.2d at 724 (emphasis added). This discretion, of course, is tempered by the requirement that any material sought be relevant to the issues in the case and that it be in the subject matter of the pending action." Fla. R. Civ. P. 1.280(b)(1).	Discretion of trial court in determining whether to permit discovery and admission of opposing counsel's fees is tempered by requirement that any information sought through discovery process must be relevant to the subject matter of pending action. West's Fla. R. Civ. P. 1.280(b)(1).	"Is discretion of trial court in determining whether to permit discovery and admission of opposing counsel's fees, tempered by a requirement that any information sought through discovery process must be relevant to the subject matter of a pending action?"	Pretrial Procedure - Memo #4831 - C-380.docx	LEGALASE-00031176-LEGALASE-00031177	Condensed SA, Sub	0.7	0	1	1	1	1
699	Farmers' Oil & Guano Co. v. S. Ref. Co., 10 Ga. App. 415	307A+725	Where a motion is made to continue the trial of a case because of the absence of a witness, the judge may consider the evidence expected to be given by the absent witness, in connection with the pleadings, for the purpose of determining the materiality of the evidence, and if he finds that the evidence of the absent witness would be either immaterial or inadmissible, he should refuse the motion. The judge in this case made the evidence of the absent witness immaterial as to some part of it, and inadmissible as to the other part, and there was no error in refusing the continuance. Richter v. State, 4 Ga. App. 274, 61 S.E. 347; Butler v. Ambrose, 51 Ga. 152.	Where a motion is made to continue the trial of a case because of the absence of a witness, the judge may consider the evidence expected to be given by the absent witness, in connection with the pleadings, for the purpose of determining the materiality of the evidence, and if he finds that the evidence of the absent witness would be either immaterial or inadmissible, he should refuse the motion.	"Should the judge consider the evidence expected to be given by the absent witness, where a motion is made to continue the trial of a case because of the absence?"	032165.docx	LEGALASE-00141657-LEGALASE-00141658	Condensed SA, Sub	0.4	0	1	1	1	1

ROW	Judicial Opinion	WKNS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
700	Bonner v. Peterson, 301 Ga. App. 443	30+3212	We review a trial court's order dismissing a plaintiff's complaint de novo. Lewis v. Ga. Dept. of Human Resources. Where the order of dismissal was based upon the plaintiff's failure to state a claim upon which relief could be granted, we affirm the order of dismissal. The plaintiff failed to establish where...the allegations of the complaint disclose with certainty that the plaintiff would not be entitled to relief under any state of provable facts asserted therein.... [Punctuation omitted]. Love v. Morehouse College. A motion to dismiss asserting sovereign immunity, however, is based upon the trial court's lack of subject matter jurisdiction, rather than the merits of the plaintiffs' claim. See Dept. of Transp. v. Dupre#3 OCGA § 9-11-12(b)(1). The party seeking to benefit from the waiver of sovereign immunity must first establish its entitlement to such protection. In the absence of pre-trial ruling on factual issues necessary to decide the OCGA § 9-11-12(b)(1) motion is reviewed on appeal under the any evidence rule.	The party seeking to benefit from the waiver of sovereign immunity has the burden of proof to establish waiver, and the trial court's pre-trial ruling on factual issues necessary to decide motion to dismiss based on the any evidence rule. West's Ga.Code Ann. § 9-11-12(b)(1).	Is a motion to dismiss asserting sovereign immunity based on a trial court's lack of subject matter jurisdiction rather than the merits of plaintiffs' claim?	032882.docx	LEGALCASE-00141509- LEGALCASE-00141510	SA, Sub	0.66	839 0	15_344 0	14_473 1	21_876 1	9,029
701	Benjamin v. Ernst & Young LLP, 2019 Ohio App. 3d 330	307A+554	In order for a trial court to grant a motion to dismiss for failure to state a claim, the plaintiff must show that no set of facts entitling him to recovery...O'Brien v. Univ. Community Tenants Union (1975), 42 Ohio St. 2d 242, 71 O.O.2d 723, 327 N.E.2d 753, syllabus. In construing the complaint upon a Civ.R. 12(B)(6) motion, a court must presume all factual allegations contained in the complaint to be true and make all reasonable inferences in favor of the nominating party. Mitchell v. Cuyahoga Falls City School Bd., 2018-01-15, 2018 WL 2253. In order for a trial court to grant a motion to dismiss for lack of subject matter jurisdiction, the standard of inquiry is whether the plaintiff has alleged any cause of action cognizable by the forum. Anco Fin. Servs. Loan Inc. v. Hale (1987), 36 Ohio App.3d 65, 67, 5720 N.E.2d 1378.	In order for a trial court to grant a motion to dismiss for lack of subject matter jurisdiction, the plaintiff must show that no set of facts entitling the plaintiff has alleged any cause of action cognizable by the forum.	"In order for a trial court to grant a motion to dismiss for lack of subject matter jurisdiction, the plaintiff must show that no set of facts entitling the plaintiff has alleged any cause of action cognizable by the forum?"	Pretrial Procedure - Memos #6077 - C- SS.docx	ROSS-00304837-A055- 003304038	Condemned, SA	0.77	0	1	0	1	
702	W.S. Butterfield Theatres v. Renaissance, 335 Mich. 345	37+3621	The principles here involved were expressed by the Supreme Court in Jackson, 283 U.S. 527, 51 S.Ct. 540, 543, 75 L.Ed. 1248, wherein it was held in upholding the constitutionality of a chainstore tax "The principle which governs the decision of this case are well settled. The power of taxation is fundamental to the very existence of the government of the states. The restriction that it shall not be so exercised as to deny to any the equal protection of the laws does not compel the adoption of an arbitrary rule of equal taxation, nor prevent variety of differences in taxation, according to local conditions, or to the nature of the property taxed. Taxation of properties, businesses, trades, callings, or occupations. Bell v. Gap, Co. v. Pennsylvania, 134 U.S. 232, 10 S.Ct. 533, 33 L.Ed. 892; Southwestern Oil Co. v. Texas, 217 U.S. 114, 30 S.Ct. 496, 54 L.Ed. 688; Brown-Forman Co. v. Kentucky, 217 U.S. 563, 30 S.Ct. 578, 54 L.Ed. 883.	Restiction that power of taxation shal not be so exercised as to deny to any the equal protection of the laws does not compel the adoption of an arbitrary rule of equal taxation, nor prevent variety of differences in taxation, according to local conditions, or to the nature of the property taxed. businessses, trades, callings, or occupations.	Does the restriction that the power of taxation shall not be so exercised as to deny to any the equal protection of the laws compel the adoption of an arbitrary rule of equal taxation?	045175.docx	LEGALCASE-00141097- LEGALCASE-00141098	Condemned, SA	0.66	0	1	0	1	
703	All for Metro. Stability v. Metro. Council, 671 N.W.2d 905	22B+486	A district court's decision to deny a motion for a continuance to conduct discovery is reviewed under an abuse-of-discretion standard. Cherne Contracting Corp. v. Wausau Ins. Cos., 272 N.W.2d 339, 346 (Minn.App.1997), review denied (Minn. Feb. 19, 1998). A transcript report not provided; therefore review is limited to whether the findings support the district court's conclusions of law. Bornmann v. Bornmann, 644 N.W. 2d 478, (Minn.App.2002). Generally, continuances should be liberally granted if they do not result in prejudice to the opposing party. In sufficient time to complete discovery. Rice v. Perl, 320 N.W.2d 407, 412 (Minn.1982). In deciding whether such a continuance should be granted, the district court must address two issues: (1) whether the plaintiff has been diligent in obtaining or seeking discovery prior to its rule 56.06 motion, and (2) whether the plaintiff is seeking further discovery in the good faith belief that material facts will be uncovered or merely engaging in a fishing expedition. Id.	In deciding whether a continuance of a summary judgment motion to conduct further discovery should be granted, the district court must address two issues: (1) whether the plaintiff has been diligent in obtaining or seeking discovery prior to its motion, and (2) whether the plaintiff is seeking further discovery in the good faith belief that material facts will be uncovered or merely engaging in a fishing expedition. 48 W.S.A., Rules Civ.Proc., Rule 56.06.	Should a court deciding a continuance be granted to allow more time for discovery consider whether the party seeking more time is acting from a good faith?	D00558.docx	LEGALCASE-00142752- LEGALCASE-00142753	SA, Sub	0.55	0	0	0	1	
704	Pellicchia v. Connecticut Light & Power Co., 52 Conn. Supp. 435	307A+554	"[A]lthough subject matter jurisdiction may be raised at any time, a motion to dismiss may not be the proper procedural vehicle for asserting that an action is not saved by [...] 52-599(a) [...]... [A] trial court properly may consider a motion to dismiss in such circumstances when the plaintiff fails to move for summary judgment. Capen v. Lee, 289 Conn. 265, 969 Tris., 9, 864 A.2d 686 (1996)." (cite 48 S.A. 52-592(a) omitted). Metcalve v. Sanford, 271 Conn. 531, 535 n. 4, 858 A.2d 757 (2004). Here, the plaintiff did not object to the issue of the motion to dismiss to raise the issue. Accordingly, the court may properly decide the motion on the merits.	Although subject matter jurisdiction may be raised at any time, a motion to dismiss may not be the proper procedural vehicle for asserting that an action is not saved by the statute that governs when a new action may be allowed following an accidental failure of suit a trial court properly may consider a motion to dismiss in such circumstances when the plaintiff fails to move for summary judgment. C.D.S.A. 52-592(a).	"Can a motion to dismiss be a proper procedure vehicle for asserting that an action is not saved by the statute, although subject matter jurisdiction may be raised at any time?"	Pretrial Procedure - Memo #6120 - C- SPB.docx	ROSS-003289572-R055- 003289573	Condemned, SA, Sub	0.35	0	1	1	1	
705	Bilalshay v. Caterpillar Tractor Co., 282 Ill. App. 3d 350	31+363	Rule 12(b)(3) requires a plaintiff to act with reasonable diligence in effecting service of process on a defendant. If the plaintiff fails to act with reasonable diligence after the statute of limitations expires, the cause of action shall be dismissed with prejudice. The plaintiff has the burden of proving reasonable diligence, and the defendant is not required to prove prejudice by the delay. v. Sacro, 136 Ill.2d 882, 286, 144 Ill.Dec. 360, 361, 555 N.E.2d 719, 720 (1990); Mayoral v. Williams, 219 Ill.App.3d 385, 370, 162 Ill.Dec. 382, 385, 573N.E.2d 1196, 1199 (1991).	Plaintiff must act with reasonable diligence in effecting service of process on a defendant. If plaintiff fails to act with reasonable diligence after the statute of limitations expires, cause of action shall be dismissed with prejudice. Sup Ct. Rules, Rule 101(b).	Does Rule 101(b) require a plaintiff to act with reasonable diligence in effecting service of process on a defendant and if the plaintiff fails to act with reasonable diligence after the statute of limitations expires shall the cause of action be dismissed with prejudice?	033728.docx	LEGALCASE-00143095- LEGALCASE-00143096	Condemned, SA, Sub	0.15	0	1	1	1	

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Between Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
706	United States v. Dixon, 530 F.2d 1386	63+111	We likewise reject the argument that impairment of the stockholders' opportunity to sue is a full and complete judgment by Davis's 3-2-25 opinion that the public official was not paid to act in breach of his duties. The public official was not paid to act in breach of his duties, although such actions may not deplete the fee and, in fact, may enrich it, they are nonetheless frauds since the public official has been paid to act in breach of his duties.	Doctrine of deprivation of honest and faithful services has developed to the situation in which a public official was not paid to act in breach of his duties, although such actions may not deplete the fee and, in fact, may enrich it, they are nonetheless frauds since the public official has been paid to act in breach of his duties.	What bribery situations has the doctrine of the deprivation of honest and faithful services been developed to fit?	Bribery - Memo #847 - C - 18.docx	ROSS-002288931-ROSS-003288933	Condensed, SA	0.82	839 0	15,344 1	14,873 0	21,876 1	9,079
707	Constantine v. Stella Maris Ins. Co., 97 AD 3d 1129	307A4683	CR 8-302(a) provides in relevant part that "a court may exercise personal jurisdiction over any non-domiciliary ... who in person or through an agent, (1) transacts any business within the state or contracts anywhere to supply goods or services in the state" (emphasis added). "While the ultimate burden of proof rests with the party asserting jurisdiction ... in opposition to a motion to dismiss pursuant to CPLR 3211(b)(8), [plaintiff] need only make a prima facie showing of the elements of the claim." (3816). [Plaintiff] has made a prima facie showing of the elements of the claim. Dynamic HVAC Supply, LLC, 44 A.D.3d 986, 986, 845 N.Y.S.2d 297. We conclude that plaintiff sustained that burden here, and we therefore affirm.	While the ultimate burden of proof rests with the party asserting jurisdiction, in opposition to a motion to dismiss for lack of personal jurisdiction, plaintiff need only make a prima facie showing that defendant was subject to trial court's personal jurisdiction. McKinney's CPLR 3211(b)(8).	"While the ultimate burden of proof rests with the party asserting jurisdiction, is the plaintiff required only to make a prima facie showing that the defendant was subject to the personal jurisdiction of the court?"	Perital Procedure-- Memo # 5814 - C - VA.docx	ROSS-002288471-ROSS-003389472	SA, Sub	0.6	0 0	0 0	1 0	1 0	
708	Halas v. Dick's Sporting Goods, 105 A.D.3d 1411	307A4554	A foreign corporation is amenable to suit in New York courts under CPLR 302(b)(1) if it "transacts any business within the state or contracts anywhere with persons who are subject to the jurisdiction of this state." Transactions include sales, soliciting customers, contracting, providing services, and shipping products into the state (see e.g., George Reiner & Co. v. Schwartz, 41 N.Y.2d 648, 653, 394 N.Y.S.2d 844, 363 N.E.2d 551; Symonow v. State St. Bank & Trust Co., 244 A.D.2d 880, 880/881, 665 N.Y.S.2d 141). Additionally, the assertion of personal jurisdiction may be reasonable where a party maintains a website that "provides information, permits access to [email] communication, describes the products and services it offers, and advertises its products and services." (3816). Online sales with the use of a website and sales are in fact made. In this manner in the forum state" (Grimaldi v. Guinn, 72 A.D.3d 37, 50, 895 N.Y.S.2d 156). Although "the ultimate burden of proof rests with the party asserting jurisdiction, ... in opposition to a motion to dismiss pursuant to CPLR 3211(b)(8), [plaintiff] need only make a prima facie showing that the defendant ... was subject to the personal jurisdiction of ... Supreme Court." (Constantine v. Stella Maris Ins. Co., Ltd., 97 AD 3d 1129, 1130, 945 N.Y.S.2d 802). We conclude that plaintiff met that burden.	Although the ultimate burden of proof rests with the party asserting jurisdiction, in opposition to a motion to dismiss for lack of personal jurisdiction, plaintiff need only make a prima facie showing that the defendant was subject to the personal jurisdiction of the court. McKinney's CPLR 3211(b)(8).	"In opposition to a motion to dismiss for lack of personal jurisdiction, need a plaintiff only make a prima facie showing that the defendant was subject to the personal jurisdiction of the court?"	033628.docx	LEGALCASE-00143897-LEGALCASE-00143898	SA, Sub	0.78	0 0	0 0	1 0	1 0	
709	Old Home Enter. v. Fleming, 20 Nbb App. 705	307A4593.1	When a lawsuit is dismissed by operation of law for lack of service of process within 6 months of filing, the trial court has no jurisdiction to make orders thereafter, except to formalize the dismissal, and if made, they are a nullity, as are subsequent pleadings. West's Nbb Rev.3d, § 5-25-237.	When a lawsuit is dismissed by operation of law for lack of service of process within 6 months of filing, the trial court has no jurisdiction to make orders thereafter, except to formalize the dismissal, and if made, they are a nullity, as are subsequent pleadings. West's Nbb Rev.3d, § 5-25-237.	"When a lawsuit is dismissed by operation of law for lack of service of process within 6 months of filing, does the trial court have no jurisdiction to make orders thereafter?"	033706.docx	LEGALCASE-00144385-LEGALCASE-00144386	SA, Sub	0.07	0 0	0 0	1 0	1 0	

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770	Spillers v. Greenfield, 63 A.D.3d 717	307A-560	The Supreme Court improvidently exercised its discretion in denying the branch of the defendants' motion which was to dismiss the 2005 action. In order "[t]o avoid dismissal for failure to timely serve a complaint after a demand or the complaint has been made pursuant to CPLR 3021(b), a plaintiff must demonstrate both a reasonable excuse for the delay in filing the complaint and a meritorious cause of action. <i>McKinney v. CPLR 3021(b)</i> . <i>Cammarata</i> , 209 A.D.2d 442, 749 N.Y.S.2d 473; see <i>Pistone v. Galligani</i> , 32 A.D.3d 814, 820 N.Y.S.2d 529; <i>Maldonado v. Suffolk County</i> , 23 A.D.3d 353, 803 N.Y.S.2d 439; <i>Giordano v. Vincilenti & Perrier</i> , 16 A.D.3d 4621, 792 N.Y.S.2d 180; <i>Tuira v. Schirripa</i> , 1 A.D.3d 349, 766 N.Y.S.2d 574). The plaintiff offered no excuse for the failure to serve a complaint during the approximately seven-month period from the demand in February 2006 to October 2006, when it purportedly intended to serve a complaint but failed to do so allegedly as a result of law-office failure. Further, until the plaintiff filed its motion to dismiss, it failed to demonstrate a meritorious cause of action. <i>See McKinney v. CPLR 3021(b)</i> . His or her authority as attorney of record for his or her client continues, as to adverse parties, unabated (see <i>Mouritsakis v. Bouloukos</i> , 112 A.D.2d 981, 983, 492 N.Y.S.2d 793). Thus, even if service of the complaint in October 2006 would have been timely, the service would have been ineffective, since the plaintiff's second attorney had not yet been substituted as counsel and therefore had no authority to act for the plaintiff in that action (see CPLR 321(b)). The 2005 action should therefore have been dismissed for failure to respond properly and timely to the defendants' demand for a complaint.	In order to avoid dismissal for failure to timely serve a complaint after a demand for the complaint has been made, a plaintiff must demonstrate both a reasonable excuse for the delay in serving the complaint and a meritorious cause of action.	Pretial Procedure - Memo # 6615 - C - RY.docx	ROSS-003302746-ROSS-003302747	Condensed SA, Sub 0.84	0	1	1	1	9,029		
	Aharon v. Bloomfield Charter Twp., 253 Mich. App. 486	371-2060	A special assessment is a levy upon property within a particular district. <i>Kadban v. Grandville</i> , 442 Mich. 495, 500 N.W.2d 291 (1993). Unlike a tax, which is imposed to raise revenue for general governmental purposes, a special assessment is designed to recover the costs of improvements that confer local and peculiar benefits upon property within a defined area. id. Two requirements must be met in order for a special assessment to be deemed valid: (1) the improvement funded by the special assessment must confer a special benefit upon the assessed properties beyond that provided to the community as a whole, and (2) the amount of special assessment must be reasonably proportionate to the benefits derived from the improvement. See id. at 501-502, 502 N.W.2d 211. <i>See Westwood Rd. Group v. Town of Westwood</i> , 395 N.W.2d 211 (1986).	Unfiled a tax, which is imposed to raise revenue for general governmental purposes, a special assessment is designed to recover the costs of improvements that confer local and peculiar benefits upon property within a defined area.	Are special assessment designed to recover the costs of improvements that confer local and peculiar benefits upon property within a defined area?	045997.docx	LEGALCASE-00144513-LEGALCASE-00144514	Condensed SA	0.73	0	1	0	1	1
771	Oldham v. Keaton, 597 S.W.2d 938	302-104(2)	The trial court was correct in overruling the amended plea of privilege. Where a plaintiff by amended petition abandons the cause of action on which venue is based and relies only upon causes of action not properly triable in the county where the suit is filed, the right to then file a plea of privilege ensues to the defendant. <i>City of San Antonio v. United Gas Pipe Co. v. Atlas Supply Co.</i> , 166 S.W.2d 240 (Tex.Civ.App. Fort Worth 1942, no writ); <i>Gossart v. Lone Star Building 8, Loan Ass'n</i> , 143 S.W.2d 219 (Tex.Civ.App. Galveston 1940, writ dismissed); <i>Wood v. Fulton Property Co.</i> , 90 S.W.2d 617 (Tex.Civ.App. Eastland 1936, no writ); <i>Farrham v. First National Bank</i> , 28 S.W.2d 883 (Tex.Civ.App. El Paso 1930, no writ); <i>Johnson v. Adams</i> , 291 S.W. 578 (Tex.Civ.App. Fort Worth), <i>rev'd on other grounds</i> , <i>Adams v. Johnson</i> , 288 S.W. 265 (Tex.Com.App. 1927, judgment adopted); <i>Farr v. Kennedy Pasture Co.</i> , 69 S.W. 420 (Tex.Civ.App. 1902, no writ); <i>City of San Antonio v. United Gas Pipe Co.</i> , 166 S.W.2d 240 (Tex.Civ.App. Fort Worth 1942, no writ). But to sustain the plea of privilege, the plaintiff must show that it had no choice but to sustain the plea of privilege. <i>See City of San Antonio v. United Gas Pipe Co.</i> , 166 S.W.2d 240 (Tex.Civ.App. Fort Worth 1942, no writ). Action properly triable in Austin County. <i>Willson v. Gross National Bank of San Antonio</i> , 535 S.W.2d 374 (Tex.Civ.App. Tyler 1976, no writ); <i>Calvert Fire Ins. Co. v. Carroll</i> , 231 S.W.2d 490 (Tex.Civ.App. Texarkana 1950, no writ); <i>Tex.R.Civ.P.</i> 86. But we do not find that to be the case. Both petitions, for example, alleged that the bulk of the estate assets consisted of lands situated mainly in Austin County, and alleged in considerable detail certain acts and omissions of Mr. Oldham which, it was asserted, constituted a breach of the fiduciary duty of the executor of the estate. The fees and other improvements, as well as the pasture and the lands themselves. Subdivision 14 of Article 1995 provides that: "Lands. Suits for the recovery of lands or damages thereto, or to remove incumbrances upon the title to land, or to quiet the title to land, or to prevent or stay	"If a plaintiff by amended petition abandons the cause of action on which venue is based and relies on causes of action not properly triable in the county where the suit is filed, does the right to then file a plea of privilege ensue to the defendant?"	Venue - Memo 133-SB.docx	ROSS-003330749-ROSS-003330750	Condensed SA	0.89	0	1	0	1	1	
	In re Peoples, 296 N.C. 109	307A-552	Whenever during course of litigation it develops that relief sought has been granted or that questions originally in controversy between parties are no longer in issue, case should be dismissed, for courts will not entertain or proceed with a cause merely to determine abstract propositions of law. <i>See North Carolina v. Thompson</i> , 266 N.C. 476, 146 S.E.2d 471 (1956); <i>In re Assignment of School Children</i> , 249 N.C. 500, 87 S.E.2d 911 (1955); <i>Savage v. Kinston</i> , 238 N.C. 551, 78 S.E.2d 318 (1953); 1 Strong's N.C. Index & Actions 13, Appeal & Error 19 (1976).	"Should case be dismissed as moot when, in course of litigation, it develops that relief sought has been granted or that questions originally in controversy between parties are no longer at issue?"	Pretial Procedure - Memo # 7201 - C - V.docx	ROSS-003389978-ROSS-003389979	Condensed SA	0.56	0	1	0	1	1	
773														

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Between Copied Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
714	Amey v. New Hampshire Dept of Educ., 362 N.H. 694	307A-561.1	Generally, in ruling upon a motion to dismiss, the trial court is required to determine whether the petitioners' pleadings are sufficient to state a claim. The court must look beyond the petitioners' legal claim but, instead, relies on the facts pleaded by the petitioners as true, construing them most favorably to the petitioners. Id. When the motion to dismiss does not challenge the sufficiency of the [petitioners'] legal claim but, instead, raises certain defenses, the trial court must look beyond the [petitioners'] legal claim and determine, based on the facts, whether the petitioners' claim is barred by the statute of limitations. Id. See, e.g., <i>Hale v. Hart Properties, Inc.</i> , 436 So.2d 1093, 1094 (Fla. 3d DCA 1983); <i>Harris v. Winn-Dixie Stores</i> , 378 So.2d 90, 94 (Fla. 1st DCA 1979). See <i>id.</i>	When the motion to dismiss does not challenge the sufficiency of petitioners' legal claim but, instead raises certain defenses, trial court must look beyond the petitioners' legal claim and determine whether petitioners have sufficiently demonstrated their right to claim relief?	Can the court look beyond petitioners' unsubstantiated allegations and determine whether petitioners have sufficiently demonstrated their right to claim relief?	11068.docx	LEGALISE-00094063- LEGALISE-00094064	Condensed, SA	0.71	839 0	15,344 0	14,873 0	21,876 1	9,079
715	Urvak v. Campos, 548 So. 2d 884	307A-590.1	Moreover, it is well-settled that the filing within the requisite one-year period of a notice of taking deposition or the issuance of a summons on a complaint, as here, constitutes sufficient record activity to preclude the dismissal of an action for failure to prosecute under Fla.R.Civ.P. 1.420(e). See, e.g., <i>Hale v. Hart Properties, Inc.</i> , 436 So.2d 1093, 1094 (Fla. 3d DCA 1983); <i>Harris v. Winn-Dixie Stores</i> , 378 So.2d 90, 94 (Fla. 1st DCA 1979).	The filing within the requisite one-year period of a notice of taking deposition, or the issuance of a summons on a complaint, constitutes sufficient record activity to preclude the dismissal of an action for failure to prosecute. West's F.S.A. RCP Rule 1.420(e).	Does the filing within the requisite one-year period of a notice of taking a deposition constitute sufficient record activity to preclude the dismissal of an action for failure to prosecute?	Period Procedure - Memo 77727 - C- SN.docx	POSS-003030065-10555- 003300863	SA, Sub	0.41	0	0	1	1	
716	Nicollet v. Baptist Eye Inst., P.A., 880 So. 2d 720	307A-590.1	Florida Rule of Civil Procedure 1.420(e) provides that "[p]laintiffs' failure to file a motion to dismiss within the time period specified for a period of 1 year shall be dismissed[]" For purposes of this rule, "record activity" is defined as "any act reflected in the court file that was designed to move the case forward toward a conclusion on the merits or to hasten the suit to judgment." <i>Barnett Bank of E. Polk County v. Fleming</i> , 508 So.2d 718, 720 (Fla.1987). In <i>Hanson v. Potest</i> , 556 So.2d 828, 830 n. 2 (Fla. 2d DCA 1990), the Second District noted that the defendant's motion to dismiss for lack of prosecution, filed a few days after the plaintiff's motion to dismiss for lack of prosecution, was an act of prosecution as contemplated by the rule. The same circumstances exist in this case. Once Nicollet filed his motion to dismiss, record activity existed in this case, which precluded the court from granting BET's subsequent motion to dismiss and from applying the dual dismissal rule.	For purposes of rule providing for dismissal of a cause of action for failure to prosecute, the court file that was designed to move the case forward toward a conclusion on the merits or to hasten the suit to judgment. West's F.S.A. RCP Rule 1.420(e).	For purposes of rule providing for dismissal of a cause of action for failure to prosecute, the court file that was designed to move the case forward toward a conclusion on the merits or to hasten the suit to judgment?	Period Procedure - Memo 77727 - C- SN.docx	POSS-0030300217-10555- 003300819	Condensed, SA, Sub	0.17	0	1	1	1	1
717	Dollar Sys. v O'Connor & Meyers, P.A., 883 So. 2d 295	307A-590.1	Record activity sufficient to avoid dismissal is more than "a mere passive effort" to keep the suit on the court docket. It is "any act reflected in the court file...designed to move the case forward toward a conclusion on the merits or to hasten the suit to judgment." <i>Barnett Bank of East Polk County v. Fleming</i> , 508 So.2d 718, 720 (Fla.1987); <i>Fore v. City of Miami</i> , 858 So.2d 378, 379 (Fla. 3d DCA 2003) (observing that to defeat a motion to dismiss for failure to prosecute, "it must be shown that there was affirmative record activity during this time by pleading or order which was reasonably calculated to advance the case toward resolution" (<i>quoting Kearney v. Ross</i> , 743 So.2d 578, 580 (Fla. 4th DCA 1999)).	Record activity sufficient to avoid dismissal for failure to prosecute is more than a mere passive effort to keep the suit on the court docket. It is "any act reflected in the court file...designed to move the case forward toward a conclusion on the merits or to hasten the suit to judgment." <i>Barnett Bank of East Polk County v. Fleming</i> , 508 So.2d 718, 720 (Fla.1987); <i>Fore v. City of Miami</i> , 858 So.2d 378, 379 (Fla. 3d DCA 2003) (observing that to defeat a motion to dismiss for failure to prosecute, "it must be shown that there was affirmative record activity during this time by pleading or order which was reasonably calculated to advance the case toward resolution" (<i>quoting Kearney v. Ross</i> , 743 So.2d 578, 580 (Fla. 4th DCA 1999)).	"For purposes of rule providing for dismissal of a cause of action for failure to prosecute, the court file that was designed to move the case forward?"	11311.docx	LEGALISE-00094420- LEGALISE-00094421	SA, Sub	0.55	0	0	1	1	
718	Dollar Sys. v O'Connor & Meyers, P.A., 883 So. 2d 295	307A-590.1	Record activity sufficient to avoid dismissal is more than "a mere passive effort" to keep the suit on the court docket. It is "any act reflected in the court file...designed to move the case forward toward a conclusion on the merits or to hasten the suit to judgment." <i>Barnett Bank of East Polk County v. Fleming</i> , 508 So.2d 718, 720 (Fla.1987); <i>Fore v. City of Miami</i> , 858 So.2d 378, 379 (Fla. 3d DCA 2003) (observing that to defeat a motion to dismiss for failure to prosecute, "it must be shown that there was affirmative record activity during this time by pleading or order which was reasonably calculated to advance the case toward resolution" (<i>quoting Kearney v. Ross</i> , 743 So.2d 578, 580 (Fla. 4th DCA 1999)).	Record activity sufficient to avoid dismissal for failure to prosecute is more than a mere passive effort to keep the suit on the court docket. It is any act reflected in the court file designed to move the case forward toward a conclusion on the merits or to hasten the suit to judgment. West's F.S.A. RCP Rule 1.420(e).	Is record activity sufficient to avoid dismissal for failure to prosecute more than a mere passive effort to keep the suit on the court docket?	035021.docx	LEGALISE-00148101- LEGALISE-00148102	SA, Sub	0.55	0	0	1	1	
719	Manning v. Wilkinson, 264 S.W.3d 620	307A-560.1	There is no dispute herein that the trial court's sua sponte order of dismissal was pursuant to CR 77.02(2), which provides, (2) At least once each year the court shall review all pending actions on their dockets, and shall determine whether the actions are being prosecuted with due diligence. The court shall enter an order dismissing without prejudice each case in which no answer or an insufficient answer to the notice is made. CR 77.02 is commonly referred to as the "housekeeping rule," and is intended to expedite the removal of stale cases from the court's docket. <i>Hertz Commercial Leasing Corporation v. Joseph</i> , 641 S.W.2d 753 (Mo. 1982). The court's sua sponte order of dismissal was not an exercise of its authority to review its cases and dismiss those in which no pretrial steps have been taken in the preceding year unless good cause is shown. See <i>Bohannon v. Rulland</i> , 616 S.W.2d 46, 46 (Ky.1981). Notably, however, the rule provides that cases shall be dismissed "without prejudice."	The rule requiring a trial court to review its cases once a year and dismiss without prejudice those in which no pretrial steps have been taken in the preceding year is commonly referred to as the "housekeeping rule," and is intended to expedite the removal of stale cases from the court's docket. Rules Civ.Proc., Rule 77.02.	"Does the "housekeeping rule," require a trial court to review its cases once a year and dismiss without prejudice those in which no pretrial steps have been taken in the preceding year?"	035065.docx	LEGALISE-00148352- LEGALISE-00148353	Condensed, SA, Sub	0.71	0	1	1	1	
720	Reyn v. Perkins, 73 Idaho 4	307A-563	It is universally recognized that a court has the inherent power and authority, in the absence of statute or rule, in the exercise of sound judicial discretion, to dismiss an action for failure to comply with an order of court relating to pleadings filed or to be filed by the plaintiff, including an order requiring amendment of his pleadings generally or with reference to making them more definite and certain.	A court has inherent authority, in the absence of statute or rule, in exercise of sound judicial discretion, to dismiss an action for failure to comply with an order of court relating to pleadings filed or to be filed by plaintiff, with reference to making them more definite and certain.	Does a court have inherent authority to dismiss an action for failure to comply with an order of court relating to pleadings filed?	035077.docx	LEGALISE-00148484- LEGALISE-00148485	Condensed, SA	0.16	0	1	0	1	

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733	Mans v. Geisler, 321 F. Supp. 215/88	251+182(2)	A party that engages in "protracted litigation" waives its right to arbitrate when an order compelling arbitration is entered. See, e.g., <i>Sherrill v. Sherill</i> , 64 N.Y.2d at 272, 475 N.E.2d at 775, 486 N.Y.2d at 1302. "Is it to be considered that the time elapsed from the commencement of litigation to the request for arbitration; (2) the amount of litigation (including exchanges of pleadings, any substantive motions, and discovery); (3) proof of prejudice, including taking advantage of pretrial discovery not available in arbitration, delay in the trial, and the expense of the trial; and (4) the effect of the arbitration right has been waived is factually specific and not susceptible to bright-line rules." <i>Cotton v. Stone</i> , 4 F.3d 176, 179 (2d Cir. 1993). "Generally, waiver is more likely to be found the longer the litigation goes on, the more a party avails itself of the opportunity to litigate, and the more that party's litigation results in prejudice to the opposing party." <i>Thyssen, Inc. v. Calypso Shipping Corp.</i> , S.A., A.M., 310 F.3d 102, 105 (2d Cir. 2002).	Factors for court to consider in determining whether party has engaged in protracted litigation, as would waive its right to arbitrate, include: (1) the amount of litigation; (2) amount of discovery; (3) proof of prejudice, including taking advantage of pre-trial discovery not available in arbitration, delay and expense.	What factors do courts need to consider in determining whether a party has engaged in protracted litigation that would waive its right to arbitration?	008003.docx	LEGALCASE-00151466-LEGALCASE-00151468	Condensed SA, Sub	0.7	839	1	14,873	21,876	9,079
734	Bendall v. Moore, 199 A.2d 8, 301+11	8, 301+11	7. The place of performance of a bill of exchange or a promissory note is the place of payment. When a bill or note is executed in one state or country and payable in another, the general rule is that it is governed as to its nature, validity, interpretation, and effect, by the laws of the state where made payable, without regard to the place where it is written, signed, or dated; it being presumed that the parties contracted with reference to the law of the state where the instrument was made and void in the place where made and valid where it was payable. The parties would be presumed to have intended to make a valid and enforceable instrument instead of one that was void.	Place of performance of a bill of exchange or a promissory note is the place of payment, and when a bill or note is executed in one state or country and payable in another, the general rule is that it is governed as to the nature, validity, interpretation, and effect by the laws of the state where made payable, without regard to the place where it is written, signed, or dated; it being presumed that the parties contracted with reference to the law of the state where the instrument was made and void in the place where made and valid where payable.	Which law governs a note when it is executed in one state and payable in another?	Billu and Notes - Memo 868- RC_59549.docx	RCSS-003203006-RCSS-00320007	Condensed SA	0.21	0	1	0	1	1
735	Avery v. New Hampshire Dept of Educ., 362 N.H. 604	307A-622	Generally, in ruling upon a motion to dismiss, the trial court is required to determine whether the allegations contained in the petitioner's pleadings are sufficient to state a basis upon which relief may be granted. <i>Id.</i> (quoting <i>Avery v. New Hampshire Dept of Educ.</i> , 362 N.H. 604, 609 (1991)). To make this determination, the court would normally accept all facts pleaded by the petitioner as true, construing them most favorably to the petitioner. <i>Id.</i> "When the motion to dismiss does not challenge the sufficiency of the [petitioner's] legal claim but, instead, raises certain defenses, the trial court must look beyond the [petitioner's] unsubstantiated allegations and determine, based on the facts, whether the [petitioner's] allegations sufficiently demonstrated their right to claim the relief sought." <i>Id.</i> (quoting <i>Avery v. New Hampshire Dept of Educ.</i> , 362 N.H. 604, 609 (1991)). A jurisdictional challenge based upon lack of standing is such a defense. <i>Id.</i> Since the relevant facts are not in dispute, we review the trial court's determination on standing de novo. See <i>Id.</i>	Generally, in ruling upon a motion to dismiss, the trial court is required to determine whether the allegations contained in the petitioner's pleadings are sufficient to state a basis upon which relief may be granted. <i>Id.</i> (quoting <i>Avery v. New Hampshire Dept of Educ.</i> , 362 N.H. 604, 609 (1991)). To make this determination, the court would normally accept all facts pleaded by the petitioner as true, construing them most favorably to the petitioner. <i>Id.</i> "When the motion to dismiss does not challenge the sufficiency of the [petitioner's] legal claim but, instead, raises certain defenses, the trial court must look beyond the [petitioner's] unsubstantiated allegations and determine, based on the facts, whether the [petitioner's] allegations sufficiently demonstrated their right to claim the relief sought." <i>Id.</i> (quoting <i>Avery v. New Hampshire Dept of Educ.</i> , 362 N.H. 604, 609 (1991)). A jurisdictional challenge based upon lack of standing is such a defense. <i>Id.</i> Since the relevant facts are not in dispute, we review the trial court's determination on standing de novo. See <i>Id.</i>	"In ruling upon a motion to dismiss, is the trial court is required to determine whether the allegations contained in the petitioner's pleadings are sufficient to state a basis upon which relief can be granted?"	037490.docx	LEGALCASE-00151875-LEGALCASE-00151876	Condensed SA	0.8	0	1	0	1	1
736	James Bros. Lumber Co. v. Du Bois, 194 Pa. 432 Pa. 129	307A-602	The circumstances under which this discretion may properly be exercised are not stated in the opinion. The court stated that the defendant's motion for judgment of non pros, when a party to the proceeding has shown a want of due diligence in failing to proceed with reasonable promptitude, and there has been no compelling reason for the delay, and the delay has caused some prejudice to the adverse party, such as the death of or unexplained absence of material witnesses. <i>Monson v. First National Bank</i> , 366 Pa. 211, 215, 77 A.2d 399. <i>Alter v. Philadelphia National Bank</i> , 372 Pa. 327, 333, 59 A.2d 695. <i>Hroba v. Gibson</i> , 316 Pa. 518, 175 A.372 Pa. 327, 333, 59 A.2d 695.	Court may enter judgment of non pros, when party has shown want of due diligence in failing to proceed with reasonable promptitude, and there has been no compelling reason for delay, and delay has caused some prejudice to adverse party, such as death of or unexplained absence of material witness.	Can court enter judgment non pros where a party has shown lack of diligence by failing to proceed with reasonable promptitude?	Pretrial Procedure - DA_59855.docx	RCSS-003203740-RCSS-003203741	Condensed SA	0.54	0	1	0	1	1
737	Brazell v. Windsor, 376 S.C. 83	307A-681	Under Rule 22(b)(6) of the South Carolina Rules of Civil Procedure a defendant may move to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action. <i>Spence v. Spence</i> , 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). The decision to grant a Rule 12(b)(6) motion to dismiss must be based solely upon the allegations set forth in the complaint. <i>Id.</i> <i>Clearwater Trust v. Bunting</i> , 367 S.C. 340, 343, 626 S.E.2d 334, 335 (2006). In deciding whether the circuit court properly granted a Rule 12(b)(6) motion to dismiss, the court should consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. <i>Spence</i> , at 116, 628 S.E.2d at 874 (2006). A motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom entitle the plaintiff to relief under any theory. <i>Id.</i> <i>Overcash v. S.C. Elec. & Gas Co.</i> , 364 S.C. 569, 572, 634 S.E.2d 659, 620 (2005). Furthermore, the complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. <i>Spence</i> , at 119, 628 S.E.2d at 874.	A decision to grant a motion to dismiss a complaint for failure to state facts sufficient to constitute a cause of action must be based solely upon the allegations set forth in the complaint. <i>Rules Civ.Proc., Rule 12(b)(6).</i>	Should a decision to grant a motion to dismiss a complaint for failure to state facts sufficient to constitute a cause of action be based solely upon the allegations set forth in the complaint?	038311.docx	LEGALCASE-00152730-LEGALCASE-00152731	SA, Sub	0.81	0	0	1	1	1
738	Bendall v. Moore, 199 A.2d 8, 301+11	8, 301+11	7. The place of performance of a bill of exchange or a promissory note is the place of payment. When a bill or note is executed in one state or country and payable in another, the general rule is that it is governed as to its nature, validity, interpretation, and effect, by the laws of the state where made payable, without regard to the place where it is written, signed, or dated; it being presumed that the parties contracted with reference to the law of the state where the instrument was made and void in the place where made and valid where it was payable. The parties would be presumed to have intended to make a valid and enforceable instrument instead of one that was void.	Place of performance of a bill of exchange or a promissory note is the place of payment, and when a bill or note is executed in one state or country and payable in another, the general rule is that it is governed as to the nature, validity, interpretation, and effect by the laws of the state where made payable, without regard to the place where it is written, signed, or dated; it being presumed that the parties contracted with reference to the law of the state where the instrument was made and void in the place where made and valid where payable.	What law governs the validity of a note when it is executed in one state and payable in another?	008855.docx	LEGALCASE-00153574-LEGALCASE-00153575	Condensed SA	0.21	0	1	0	1	1

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739	Conboy v. State, 292 Conn. 642	307A-e79	When a trial court decides a jurisdictional question raised by a pretrial motion to dismiss on the basis of the complaint alone, "it must consider the allegations of the complaint in their most favorable light.... In this regard, a court must take the facts to be those alleged in the complaint, and it may not draw inferences from the facts or conclusions from them in a manner most favorable to the plaintiff." [Internal quotation marks omitted] Filippov, Sullivan, supra, 273 Conn. at 8, 866 A.2d 599; see also Shoy v. Rossi, 253 Conn. 134, 140, 749 A.2d 1147 [2000], overruled in part by Miller v. Egan, 265 Conn. 301, 325, 828 A.2d 549 [2003]; see e.g., Federal Deposit Ins. Corp. v. Peabody N.E., Inc., supra, 293 Conn. at 99-100, 580 A.2d 1321 (deciding jurisdictional question on pleadings alone).	When a trial court decides a jurisdictional question, raised by a pretrial motion to dismiss for lack of subject matter jurisdiction, on the basis of the complaint alone, I must consider the allegations of the complaint in their most favorable light, and in this regard, the trial court must take the facts to be those alleged in the complaint, and it may not draw inferences from the facts or conclusions from them in a manner necessarily implied from the allegation, construing them in a manner most favorable to the pleader. Practice Book 1998, § 10-31(a)(1).	"Where a court decides a question raised by a pretrial motion to dismiss, should it consider the allegations of the complaint in their most favorable light?"	Q38276.docx	LEGALASE-00154597- LEGALASE-00152976	15,344	14,873	1	0	1	21,876	9,029
	GMAC Mortg. v. Ford, 144 Conn. App. 165	307A-e85	"In contrast, if the complaint is supplemented by undisputed facts established by affidavits submitted in support of the motion to dismiss... other types of undisputed evidence ... and/or public records of which judicial notice may be taken... the trial court, in determining the jurisdictional issue, may consider these supplementary undisputed facts and need not conclusively presume the validity of the allegations of the complaint.	If a complaint is supplemented by undisputed facts established by affidavits submitted in support of a motion to dismiss, other types of undisputed evidence, and/or public records of which judicial notice may be taken, the trial court, in determining jurisdictional issue, may consider these supplementary undisputed facts and need not conclusively presume the validity of the allegations of the complaint.	"Can the trial court, in determining a jurisdictional issue, consider supplementary undisputed facts?"	Q38629.docx	LEGALASE-00154585- LEGALASE-00154586	0.46	0	1	0	1		
740	African Dragons Mkt. Corp. v. Golden Gate Yacht Club, 109 A.D.3d 204	307A-e24	The sole criterion for deciding a motion to dismiss a complaint pursuant to CPLR § 3211(a)(7) "... is whether the pleading states a cause of action, and, if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law a motion for dismissal will fail" (Guggenheimer v. Ginzburg, 48 N.Y.2d 268, 275, 401 N.Y.S.2d 182, 372 N.E.2d 171 [1977]). As the Court of Appeals instructed in 511 W. 252nd Owners Corp. v. Jennifer Realty Co., 98 N.Y.2d 344, 133 F.3d 486 N.Y.S.2d 131, 73 N.Y.2d 499 [2002], "in turning over this task to the courts, the legislature intended that the courts would be alerted in the complaint and any admissions in opposition to the defendant's motion to dismiss conclusively establish that jurisdiction is lacking, and the plaintiff fails to undermine this conclusion with counter-affidavits ... or other evidence, the trial court may dismiss the action without further proceedings..."	Sole criterion for deciding a motion to dismiss a complaint for failure to state a cause of action is whether the pleading states a cause of action, and, if from its four corners, factual allegations are discerned which, taken together, manifest any cause of action cognizable at law a motion for dismissal will fail. McKinney's CLR § 3211(a)(7).	"Is the sole criterion for deciding a motion to dismiss a complaint for failure to state a cause of action whether the pleading states a cause of action pursuant to CPLR 3211(a)(7), whether the pleading states a cause of action?"	Q38621.docx	LEGALASE-00153909- LEGALASE-00153910	0.66	0	0	1	1		
741	Belisy v. Lowell, 117 A.D.2d 575	307A-e81	"Before the drastic penalty of dismissal for failure to prosecute is imposed upon a plaintiff, a balanced consideration of all relevant factors is required" (Carroll v. DeFranco, 55 A.D.2d 712, 713, 388 N.Y.S.2d 127). To be considered are the merit or lack of merit of the action, extent of the delay, prejudice or lack of prejudice to the defendants and intent or lack of intent to deliberately default or abandon the action, as well as the efforts of the plaintiff to prosecute the action, as well as the efforts of the defendant to defend the action. See, e.g., Pyner, 89 A.D.2d 718, 719, 333 N.Y.S.2d 138. Here, as Special Term apparently found, the foregoing factors militated against denial of plaintiff's motion, except for dissatisfaction with the availability of plaintiff's trial counsel. We find that counsel's actions did not amount to willful abandonment of the action, and evidenced a good faith attempt to comply with the court's interim order. Furthermore, the prejudice suffered by the defendant was minimal, and the defendant failed to show, under such circumstances, it is proper to save the action for the client while imposing upon the attorney, personally, a penalty for his neglect. Accordingly, we reverse, and grant the motion upon the condition heretofore stated.	Drastic penalty of dismissal for failure to prosecute requires balanced consideration of all relevant factors before imposition, including merit or lack of merit of action, extent of delay, prejudice or lack of prejudice to defendants and intent or lack of intent to deliberately default or abandon action, as well as strong public policy favoring disposition on the merits.	Does drastic penalty of dismissal for failure to prosecute require balanced consideration of all relevant factors before imposition?	Q38797.docx	LEGALASE-00154051- LEGALASE-00154052	0.7	0	1	0	1		
742	Dow v. Rockingham Ct. Sch. Bd., 658 F. Supp. 403	78-1309	Supervised student would offer irrefragable harm by walking early one month for administrative hearing and, therefore, was not required to exhaust administrative remedies in order to bring claim for violation of procedural due process under statute that prohibits deprivation of federal statutory or constitutional rights under color of state law.	Supervised student would offer irrefragable harm by walking early one month for administrative hearing and, therefore, was not required to exhaust administrative remedies in order to bring claim for violation of procedural due process under statute that prohibits deprivation of federal statutory or constitutional rights under color of state law. 42 U.S.C.A. § 1983; U.S.C.A. Const. Amendments 5, 14.	Does a student have a constitutional right to an administrative law hearing?	Q17085.docx	LEGALASE-00154620- LEGALASE-00154630	0.13	0	1	1	1		
743	Berges v. Pifer, 108 A.D.3d 1116	307A-e85	Even assuming, argendo, that the plaintiff provided a reasonable excuse for her action by serving on the defendant attorneys after the complaint has been filed, the plaintiff has failed to establish a prima facie case. It must be of a type which would defeat a motion for summary judgment on the ground that there is no issue of fact. McKinney's CLR § 3012(b).	An meritorious cause of action, which must be shown to avoid dismissal for failure to timely prosecute after the complaint has been filed, is one which is based on facts sufficient to establish a prima facie case. It must be of a type which would defeat a motion for summary judgment on the ground that there is no issue of fact. McKinney's CLR § 3012(b).	Can a meritorious cause of action be established by way of an affidavit or merit containing extraordinary facts sufficient to establish a prima facie case?	Q39800.docx	LEGALASE-00154908- LEGALASE-00154909	0.56	0	1	1	1		
744	Thompson v. Cohen, 160 A.D.2d 1157	307A-e54-1	In order to avoid dismissal of an action as abandoned when a default has occurred, the plaintiff has failed to seek a judgment within one year after the default, the plaintiff must demonstrate a reasonable excuse for the delay and that the cause of action has merit. (Manago v. Giordano, 143 A.D.2d 646, 647, 533 N.Y.S.2d 106; Woodward v. City of New York, 119 A.D.2d 749, 750, 501 N.Y.S.2d 159). Defendants contend that Supreme Court erred in denying their motion to dismiss since plaintiff	In order to avoid dismissal of an action as abandoned when a default has occurred, plaintiff must demonstrate reasonable excuse for delay and that cause of action has merit. McKinney's CLR § 3215(c).	Should the plaintiff demonstrate a reasonable excuse for the delay and request for judgment within one year after the default and where the plaintiff has failed to seek a judgment within one year after the default?	Prelim Procedure - Memo at 01050 - C-003279476	RGSE-00378477-RGSE-003279476	0.5	0	1	0	1		

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Between Headnote and Opinion	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
746	Simmons v. McSimmons, 281 A.D.2d 547	307A-486	It is well established that in order to defeat a motion to dismiss a pleading, the party opposing the motion must demonstrate that the motion is unwarranted. In the instant case, the defendant failed to comply with the demand and a meritorious claim. (CPR § 3216 (e); Dick v. Samaritan Hosp., 115 A.D.2d 817, 496 N.Y.2d 814.) Pursuant to 22 NYCRR 202.21(a) and (b), a note of issue must be accompanied by a certificate of readiness, which must state that all discovery proceedings known to be necessary are complete and that there are no outstanding requests for discovery.	In order to defeat a motion to dismiss a pleading for failure to prosecute, the party opposing the motion must demonstrate that the motion is unwarranted. In the instant case, the defendant failed to comply with the demand, and a meritorious claim. (McKinney's CPR § 3216 (e)).	"In order to defeat a motion to dismiss a pleading for failure to prosecute, should a party upon whom a demand is filed, a note of issue is served demonstrate a justifiable excuse?"	Pretrial Procedure - Rule 2022 - C - PE_20407.docx	ROSS-002324246-1055-00339447	Condensed SA, Sub 0.56	0.56	889	15,344	14,873	21,876	9,079
	City of Fort Wayne v. Shaw, 82 N.E.3d 259	307A-484	trial court may consider not only the complaint and motion but also any affidavits or evidence submitted in support. GGN Co. v. Magness, 744 N.E.2d 397, 400 (Ind. Ct. App. 2001). In addition, the trial court may weigh the evidence to determine the existence of the requisite facts. Id. Our standard of review is dependent "on what happened in the trial court." Id. at 401. When, as here, "the facts before the trial court are not in dispute, then the question of subject matter is purely one of law." Id. Under these circumstances no difference is afforded to the trial court's slightest difference to trial court determinations, evaluate those issues they deem to be questions of law. Blader v. Johnson, 732 N.E.2d 1212, 1216 (Ind. 2000). Thus, we review de novo a trial court's ruling on a motion to dismiss under Trial Rule 12(B)(1) where the facts before the trial court are undisputed.	In ruling on a motion to dismiss, for lack of subject matter jurisdiction, the trial court may consider not only the complaint and motion but also any affidavits or evidence submitted in support. In addition, the trial court may weigh the evidence to determine the existence of the requisite jurisdictional facts. Ind. R. Trial P. 12(B)(1).	"In ruling on a motion to dismiss for lack of subject matter jurisdiction, can the trial court consider any affidavits or evidence submitted in support of the motion?"	024830.docx	LEGALISE-00157600 LEGALISE-00157601	Condensed SA, Sub 0.68	0	1		1	1	1
747	Day v. State, 68 Wash. 2d 364	307A-588	(a) Dismissal on Motion of Parties. Any civil action shall be dismissed, without prejudice, for want of prosecution whenever the plaintiff, counterclaimant, cross-claimant, or third-party plaintiff neglects to file the action for trial or hearing within one year after any issue of law or fact has been joined, unless the failure to bring the same on for trial or hearing was caused by the party who makes the motion to dismiss. Such motion to dismiss shall come on for hearing only after notice to the motion to dismiss is filed.	Under rule requiring dismissal without prejudice of any civil action for want of prosecution whenever plaintiff neglects to file action for trial or hearing within one year after any issue of law or fact has been joined, unless failure to bring same on for trial or hearing was caused by party making motion to dismiss, dismissal is mandatory and judicial discretion is not permitted. Rules of Pleading, Practice and Procedure, rule 41.04W.	Is the general rule that a dismissal for want of prosecution is a dismissal without prejudice?	025119.docx	LEGALISE-00156893 LEGALISE-00156894	Condensed SA, Sub 0.25	0	1	1	1	1	1
748	Wheldon v. Wheldon, 313 N.C. 200	307A-694	Ordinarily, an involuntary dismissal under Rule 41(b) operates as an adjudication upon the merits and ends the lawsuit. Barnes v. McGee, 21 N.C.App. 287, 204 S.E.2d 202 (1974). The rule itself sets forth specific exceptions to this proposition, none of which are relevant to the case sub-judice, and as to these grounds, an order of involuntary dismissal is not rendered on the merits and may not constitute a dismissal with prejudice. See, e.g., DeLong v. Conner & Conner, 322 N.C.App. 446, 383 S.E.2d 889, 78-1 (1978). However, the majority opinion in Wheldon v. Wheldon (2nd Ed.), 41-8. However, the majority opinion in Wheldon v. Wheldon is proposition that an involuntary dismissal operates as a final adjudication is found in the power lodged by Rule 41(b) in the trial judge to specifically order that the dismissal is without prejudice and, therefore, not an adjudication on the merits. Id. at 329.	Ordinarily, involuntary dismissal pursuant to rule dealing with effect of such dismissal operates as an adjudication upon merits and ends lawsuit; however, major exception to such general proposition is found in power lodged by rule in trial judge to specifically order that dismissal is without prejudice and, therefore, not an adjudication on merits. Rules Civ.Proc., Rule 41(b), G.S. 5A-14-1.	Though ordinarily an involuntary dismissal operates as an adjudication of the merits, does a trial judge have the power to specifically order that the dismissal is without prejudice?"	025154.docx	LEGALISE-00157613 LEGALISE-00157614	Condensed SA	0.56	0	1	0	1	
750	Reiser v. Reiser, 620 S.W.2d 802	307A-693.1	Appellant argues that her attorney's record reflected no written notice of dismissal. The record reveals that appellant received actual notice of dismissal by January 15, 1990, the day she filed her motion to reinstate. Furthermore, the finality of dismissals under the rule is not affected by failure to mail notices except to extend the time for filing a motion to reinstate beyond the thirty day period set forth in the rule. Tex.R.Civ.P. 165a. The time limits prescribed in Rule 165a are mandatory, and reinstatement orders rendered after expiration of the six months period are void. Walker v. Harrison, 397 S.W.2d 933 (Tex.1966).	Finality of dismissals under rule providing for dismissals for want of prosecution is not affected by failure to mail notices except to extend time for filing motion to reinstate beyond 30-day period set forth in the rule. Rules of Civil Procedure, Rule 165a.	Is finality of dismissals under rule providing for dismissals for want of prosecution not affected by failure to mail notices, except to extend time for filing a motion to reinstate beyond 30-day period set forth in the rule?	025257.docx	LEGALISE-00156849 LEGALISE-00156850	Condensed SA	0.59	0	1	0	1	
751	Randolph v. Hays, 665 P.2d 500	307A-581	Rule 14 of the Uniform Rules for the District Courts of the State of Wyoming (see n. 1) and Rule 41(b)(2), W.R.C.P., authorize the district courts to dismiss an action for lack of prosecution. Beyond that, a court has inherent power to dismiss an action upon its own motion for lack of prosecution. Link v. Wabash Railroad Company, supra; Johnson v. Board of Commissioners of Laraine County, Wyo., 588 P.2d 237, 238 (1978); Link v. Wabash Railroad Company, 588 P.2d 237, 238 (1978); P.2d 623, 629 (1933). While no precise rule may be laid down, as to what circumstances justify a dismissal for lack of prosecution, the circumstances surrounding each case must be examined, keeping in mind the conflict between the need for the court to manage its docket for the purpose of preventing undue delay on the one hand, and the policy favoring disposition of cases on the merits on the other hand.	When no precise rule may be laid down as to what circumstances justify dismissal for lack of prosecution, circumstances surrounding each case must be examined, keeping in mind the conflict between need for the court to manage its docket for purpose of preventing undue delay on the one hand, and policy favoring disposition of cases on the merits on the other hand. Rules Civ.Proc., Rule 41(b)(2); District Court Rule 14.	Can a precise rule be laid down as to what circumstances justify a dismissal for lack of prosecution?	025377.docx	LEGALISE-00157506 LEGALISE-00157507	Condensed SA, Sub 0.53	0	1	1	1	1	1
752	Summers v. Vill. of Durand, 267 Ill. App. 3d 767	307A-563.1	Where laches is apparent from the face of the complaint, it is a proper subject for a section 7615 motion to dismiss. (See Senese v. Ciminello, Inc. (1991), 222 Ill.App.3d 302, 164 Ill.Dec. 236, 582 N.E.2d 1180); People ex rel. Casey v. Health & Hospitals Governing Comm'n (1977), 69 Ill.2d 108, 12 Ill.Dec. 695, 370 N.E.2d 493.) However, where the defense of laches is not apparent from the face of the complaint, the motion is properly made pursuant to section 7615(a)(9) (735 ILCS 5/7615(a)(9) (West 1992) which provides as a ground for dismissal that a challenging party has shown that the claim is barred by laches or estoppel. The party defeating the claim) and must be supported by affidavit. See Schons v. Monarch Insurance Co. (1991), 214 Ill.App.3d 601, 158 Ill.Dec. 289, 574 N.E.2d 83.	Where defense of laches is not apparent from face of complaint, motion to dismiss is properly made pursuant to statute, providing for dismissal when challenged claim is barred by affirmative matter avoiding the legal effect of or defeating the claim, and must be supported by affidavits. S.H.A. 735 ILCS 5/7615(a)(9).	Can a dismissal be provided to support an affidavit when challenged claim is barred by affirmative matter avoiding the legal effect of or defeating the claim?	025444.docx	LEGALISE-00158016 LEGALISE-00158027	Condensed SA, Sub 0.6	0	1	1	1	1	1

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758	Humphreys v. Meadows, 938 S.W.2d 750	307A-695	A trial court may not dismiss a plaintiff's case for pleading defects unless an opportunity is first afforded to amend and cure the defect. Texas Dept. of Corrections v. Herrington, 513 S.W.2d 619 (Tex.1974). Albritton, 859 S.W.2d at 582. Moreover, if a plaintiff makes a good faith attempt to amend his petition in response to the trial court's sustaining of a plaintiff's amended petition unless the defendant files special exceptions, the court sustains new special exceptions, and the court gives plaintiff opportunity to amend revised pleadings.	If a plaintiff makes good faith attempt to amend his petition in response to a trial court's sustaining of a defendant's special exceptions, trial court may not dismiss plaintiffs amended petition unless defendant files special exceptions to revised pleadings, courts sustain new special exceptions, and court gives plaintiff opportunity to amend revised pleadings.	"If a plaintiff makes a good faith attempt to amend his petition in response to a trial court's sustaining of a defendant's special exceptions, can a trial court not dismiss a plaintiff's amended petition?"	040283.docx	LEGALASE-00160897- LEGALASE-00160898	Condensed, SA	0.45	839 0	15,344 0	14,873 0	21,876 1	3,029
759	Sutherland v. Illinois Bell, 254 Ill. App. 3d 983	307A-695	Before addressing the substance of plaintiff's cause of action under these guidelines, we must first determine whether she has elected to stand on her complaint or whether she has elected to file a new complaint. If the trial court dismisses with prejudice a plaintiff's complaint, a failure to request leave to file a new complaint before appealing constitutes an election to stand on the dismissed complaint, and the cause of action must stand or fall on the facts alleged therein.	Generally, if a trial court dismisses with prejudice a plaintiff's complaint, failure to request leave to file new complaint before appealing constitutes an election to stand on the dismissed complaint, and cause of action must stand or fall on facts alleged therein.	"If a trial court dismisses with prejudice a plaintiff's complaint, does failure to request leave to file new complaint before appealing constitute an election to stand on the dismissed complaint?"	Pretal Procedure-Memo 11646 - C - WJ_003603.docx	R055-00327884	Condensed, SA	0.46	0	1	0	1	
760	Gillies v. the Holy Child Institute for the Deaf, Inc., Corwin, 51 Misc. 3d 44	14 E-537	Parent's allegation that private school's personnel were unqualified to address needs of their daughter constituted claim for educational malpractice, which was not cognizable as cause of action or defense, under New York law, providing that quality and qualifications of teachers employed by private schools were concerns not for courts, but rather for New York State Education Department and its Commissioner. McKinney's Education Law § 5003. Although defendants contended that an issue of fact exists as to whether plaintiff was able to meet their daughter's special education needs, such question is not cognizable as cause of action or defense under New York law. See McKinney's Education Law § 5003(1)(iii), which provides that "educational programs and pedagogical methods" ("Pedagogical Programs") are concerns not for the courts, but rather for the State Education Department and its commissioner ("Pedagogical Programs"). The quality and qualifications of teachers employed by private schools "are concerns not for the courts, but rather for the State Education Department and its commissioner." Paladino v. Adelphi Univ., 89 A.D.2d 86, 90, 654 N.Y.S.2d 865 [1982], quoting Doronov v. College Union Free School Dist., 64 A.D.2d 229, 35, 407 N.Y.S.2d 874 [1978]]. The quality and qualifications of teachers employed by private schools "are concerns not for the courts, but rather for the State Education Department and its commissioner." Paladino v. Adelphi Univ., 89 A.D.2d 86, 90, 654 N.Y.S.2d 865 [1982], quoting Doronov v. College Union Free School Dist., 64 A.D.2d 229, 35, 407 N.Y.S.2d 874 [1978]]. 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768	Ultrashave House, Ltd. v. Meyer, 407 So. 2d 125	307A3331	As reflected in the orders of the trial court, this defendant was given every opportunity to comply with the trial court's orders. Although admonished to comply by its attorney, it repeatedly refused to do so. We agree with the trial court that such conduct cannot be sanctioned. The trial court has found that this defendant has willfully disregarded reasonable and necessary court orders and caused the plaintiff considerable delay and expense in having its claim adjudicated. We affirm the trial court's imposition of these sanctions, including the award of attorneys' fees, which likewise are expressly authorized in Rule 37. It has been observed that the sanction of judgment by default for failure to comply with discovery orders is the most severe sanction which a court may apply, and its use must be tempered by the careful exercise of judicial discretion to assure that its imposition is merited; however, where one party has acted with willful and deliberate disregard of reasonable and necessary court orders in efficient administration of justice, application of even so stringent a sanction as entry of a judgment by default is fully justified and should not be disturbed. Trans World Airlines, Inc. v. Hughes, 332 F.2d 602 (2nd Cir. 1964), cert. dismissed, 380 U.S. 248, 85 S.Ct. 394, 13 L.Ed.2d 87 (1965); 1 Lyon, Ala. Prac., Author's Comments to Rule 37.	Where one party has acted with willful and deliberate disregard of reasonable and necessary court orders and efficient administration of justice, application of so stringent a sanction as entry of a judgment by default is fully justified and should not be disturbed. Rules Civ.Proc., Rule 37.	"Where one party has acted with willful and deliberate disregard of reasonable and necessary court orders, is a stringent sanction as an entry of a default judgment fully justified."	10091.docx	LEGALCASE-00094368-LEGALCASE-00094369	SA, Sub	0.78	839	15,344	14,873	21,876	9,029
769	Cotter v. Dias, 130 A.3d 164	307A581	"In considering a dismissal motion, a trial justice 'must weigh the equities between the parties.'" Coates, 38 A.3d at 560 (quoting Harvey, 764 A.2d at 143). "On the one hand is the court's need to manage its docket, the public interest in the expeditious resolution of litigation, and the risk of prejudice to the defendants from delay, and on the other hand, there is the desire to dispose of cases on their merits." "Id. (quoting Harvey, 764 A.2d at 143). When weighing the equities, the court 'need not view the evidence in a light most favorable to the plaintiffs.' Bergeron, 866 A.2d at 1237 (quoting Harvey, 764 A.2d at 143). Also, it is well settled in Alabama that a trial court's decision to grant a motion for judgment by default of prosecution." Harvey, 764 A.2d at 143 (citing S.A. v. Wall v. Providence Nat'l Co., 415 A.2d 1040, 1042 n. 1 (H.1 1980)).	"Should court balance the need to manage its docket and the public interest in the expeditious resolution of litigation, in considering a dismissal motion for lack of prosecution?"		07394.docx	LEGALCASE-00096347-LEGALCASE-00096348	Condensed, SA, Sub	0.58	0	1	1	1	1
770	K.H. v. Jefferson City, Dep't of Human Res., 106 So. 3d 420	308A21	In any event, the juvenile court's decision to continue with the dispositional trial despite the absence of the mother's retained counsel is not reversible error. "As a general rule, continuances are not favored under Alabama law." D.A. v. Calhoun City, Dep't of Human Res., 576 So.2d 502, 504 (Ala. Civ. App. 2007). Even in situations in which a party has a right to counsel and counsel is not present, a continuance may not be required. As we explained in Pappasios v. Southeast General Contractors, Inc., 982 So.2d 1099, 1103 (Ala.Civ.App.2007) (quoting Ex parte McCain, 804 So.2d 386, 389 (Ala.2001) (See, J., concurring specially)). " '[The constitutional right to counsel in a civil matter], however, is not without limitation, and a trial court's refusal to grant a continuance when counsel fails to appear will not be deemed reversible error in every case. "We noted in Pappasios that, '[a]lthough the record does not indicate with certainty why an attorney did not appear at trial with [the defendant], it tends to indicate that an attorney did not appear at trial because of the attorney's failure to appear on time and that [the attorney] approximately a month before trial and they could not secure the services of a replacement at that late date."	"Is the constitutional right to counsel in a civil matter not without limitation, and a trial court's refusal to grant a continuance when counsel fails to appear will not be deemed reversible error in every case?"	"Is the constitutional right to counsel in a civil matter not without limitation, and a trial court's refusal to grant a continuance when counsel fails to appear will not be deemed reversible error in every case?"	023482.docx	LEGALCASE-00136528-LEGALCASE-00136529	Condensed, SA	0.81	0	1	0	1	1
771	Corvington City Bank v. Magee, 177 So. 3d 826	307A424	A motion to dismiss under Rule 12(b)(6) presents questions of law which we review de novo. On a motion to dismiss, "the allegations in the complaint must be taken as true, and the motion should not be granted unless it appears beyond doubt that the plaintiff will be unable to prove no set of facts in support of his claim." Rule 12(b)(6) motions "are decided on the face of the pleadings alone." "Here, looking to the face of the complaint, we cannot say that Magee's claims are time-barred, barred by issue preclusion, or that CCB had a contractual right to the PROPERTY. So we affirm."	On a motion to dismiss for failure to state a claim upon which relief can be granted, the allegations in the complaint must be taken as true, and the motion should not be granted unless it appears beyond doubt that the plaintiff should not be granted to prove any set of facts in support of his claim. Rules Civ.Proc., Rule 12(b)(6).	Should the allegations in the complaint be taken as true on a motion to dismiss and that the motion should not be granted unless it appears beyond doubt that the plaintiff will be unable to prove any set of facts in support of its claim?	Pretrial Procedure - Memo # 8303 - C-UG_00562.docx	ROSS-003281610-ROSS-003281611	SA, Sub	0.44	0	0	1	1	1
772	Fort Worth Hotel Ltd. P/Wip v. Enserch Corp., 977 S.W.2d 746	307A43	We begin by addressing Lone Star Gas's disregard for the motion in limine. A motion in limine is a procedural device that permits a party to identify, before trial, certain evidentiary rulings that the court may be asked to make. See Hartford Accident & Indem. Co. v. McCordell, 369 S.W.2d 331, 335 (Tex. 1963). The purpose of a motion in limine is to prevent the other party from asking prejudicial questions and introducing prejudicial evidence in front of the jury without first asking the court's permission. Id. The trial court's ruling on a motion in limine is not a ruling that excludes or admits evidence; it is merely a tentative ruling that prohibits a party from asking a certain question or offering certain evidence in front of the jury without first approaching the bench for a ruling. See Chavis v. Director, 924 S.W.2d 389, 446 (Tex. App. Beaumont 1996, no writ). When a trial court's order on a motion in limine is violated, we review the violation to see if it is curable by instructions to the jury to disregard it. See Dove v. Director, State Employees Workers' Compensation Div., 857 S.W.2d 577, 580 (Tex. App. Houston [1st Dist.] 1993, writ denied).	Motion in limine is a procedural device that permits a party to identify, before trial, certain evidentiary rulings that the court may be asked to make; its purpose is to prevent the other party from asking prejudicial questions and introducing prejudicial evidence in front of the jury without first asking the court's permission.	"Is a motion in limine a procedural device that identifies, prior to trial, evidentiary rulings that a court may be asked to make?"	Pretrial Procedure - Memo # 833 - C-UG.docx	ROSS-003284018-ROSS-003284019	Condensed, SA	0.72	0	1	0	1	1

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773	Frieman's Fund Ins. Co. v. Maryland Cas. Co., 65 Cal. App. 4th 1279	36e+1	Subrogation is defined as the substitution of another person in place of the creditor or claimant to whose rights he or she succeeds in relation to the debt or claim. By undertaking to indemnify or pay the principal amount of a claim, the insurer has assumed the obligation to step into the shoes of the creditor or claimant and to exercise the rights of the creditor or claimant equally subrogated to the claimant. or "subrogee," and succeeds to the subrogee's rights against the obligor. (Black's Law Dict. (6th ed.1990) p. 1427, col. 4.) In the case of insurance, subrogation takes the form of an insurer's right to be put in the position of the insured in order to pursue recovery from third parties legally responsible to the insured for a loss which the insurer has both insured and paid. (Allstate Ins. Co. v. Loo (1986) 46 Cal.App.4th 1794, 1799-1800, 1802-03, 1805-06, 1808-10, 1811-12, 1815-16, 1819-20, 1822-23, 1825-26, 1828-29, 1831-32, 1834-35, 1838-39, 1841-42, 1844-45, 1847-48, 1851-52, 1854-55, 1857-58, 1860-61, 1863-64, 1866-67, 1869-70, 1872-73, 1875-76, 1878-79, 1881-82, 1884-85, 1887-88, 1890-91, 1893-94, 1896-97, 1899-90, 1901-02, 1904-05, 1907-08, 1910-11, 1913-14, 1916-17, 1919-20, 1922-23, 1924-25, 1927-28, 1930-31, 1933-34, 1936-37, 1939-40, 1942-43, 1945-46, 1948-49, 1951-52, 1954-55, 1957-58, 1960-61, 1963-64, 1966-67, 1969-70, 1972-73, 1975-76, 1978-79, 1981-82, 1984-85, 1987-88, 1990-91, 1993-94, 1996-97, 1999-00, 2001-02, 2004-05, 2007-08, 2010-11, 2013-14, 2016-17, 2019-20, 2022-23, 2024-25, 2027-28, 2030-31, 2033-34, 2036-37, 2039-40, 2042-43, 2045-46, 2048-49, 2051-52, 2054-55, 2057-58, 2060-61, 2063-64, 2066-67, 2069-70, 2072-73, 2075-76, 2078-79, 2081-82, 2084-85, 2087-88, 2090-91, 2093-94, 2096-97, 2099-00, 2101-02, 2104-05, 2107-08, 2110-11, 2113-14, 2116-17, 2119-20, 2122-23, 2124-25, 2127-28, 2130-31, 2133-34, 2136-37, 2139-40, 2142-43, 2145-46, 2148-49, 2151-52, 2154-55, 2157-58, 2160-61, 2163-64, 2166-67, 2169-70, 2172-73, 2175-76, 2178-79, 2181-82, 2184-85, 2187-88, 2190-91, 2193-94, 2196-97, 2199-00, 2201-02, 2204-05, 2207-08, 2210-11, 2213-14, 2216-17, 2219-20, 2222-23, 2224-25, 2227-28, 2230-31, 2233-34, 2236-37, 2239-40, 2242-43, 2245-46, 2248-49, 2251-52, 2254-55, 2257-58, 2260-61, 2263-64, 2266-67, 2269-70, 2272-73, 2275-76, 2278-79, 2281-82, 2284-85, 2287-88, 2290-91, 2293-94, 2296-97, 2299-00, 2301-02, 2304-05, 2307-08, 2310-11, 2313-14, 2316-17, 2319-20, 2322-23, 2324-25, 2327-28, 2330-31, 2333-34, 2336-37, 2339-40, 2342-43, 2345-46, 2348-49, 2351-52, 2354-55, 2357-58, 2360-61, 2363-64, 2366-67, 2369-70, 2372-73, 2375-76, 2378-79, 2381-82, 2384-85, 2387-88, 2390-91, 2393-94, 2396-97, 2399-00, 2401-02, 2404-05, 2407-08, 2410-11, 2413-14, 2416-17, 2419-20, 2422-23, 2424-25, 2427-28, 2430-31, 2433-34, 2436-37, 2439-40, 2442-43, 2445-46, 2448-49, 2451-52, 2454-55, 2457-58, 2460-61, 2463-64, 2466-67, 2469-70, 2472-73, 2475-76, 2478-79, 2481-82, 2484-85, 2487-88, 2490-91, 2493-94, 2496-97, 2499-00, 2501-02, 2504-05, 2507-08, 2510-11, 2513-14, 2516-17, 2519-20, 2522-23, 2524-25, 2527-28, 2530-31, 2533-34, 2536-37, 2539-40, 2542-43, 2545-46, 2548-49, 2551-52, 2554-55, 2557-58, 2560-61, 2563-64, 2566-67, 2569-70, 2572-73, 2575-76, 2578-79, 2581-82, 2584-85, 2587-88, 2590-91, 2593-94, 2596-97, 2599-00, 2601-02, 2604-05, 2607-08, 2610-11, 2613-14, 2616-17, 2619-20, 2622-23, 2624-25, 2627-28, 2630-31, 2633-34, 2636-37, 2639-40, 2642-43, 2645-46, 2648-49, 2651-52, 2654-55, 2657-58, 2660-61, 2663-64, 2666-67, 2669-70, 2672-73, 2675-76, 2678-79, 2681-82, 2684-85, 2687-88, 2690-91, 2693-94, 2696-97, 2699-00, 2701-02, 2704-05, 2707-08, 2710-11, 2713-14, 2716-17, 2719-20, 2722-23, 2724-25, 2727-28, 2730-31, 2733-34, 2736-37, 2739-40, 2742-43, 2745-46, 2748-49, 2751-52, 2754-55, 2757-58, 2760-61, 2763-64, 2766-67, 2769-70, 2772-73, 2775-76, 2778-79, 2781-82, 2784-85, 2787-88, 2790-91, 2793-94, 2796-97, 2799-00, 2801-02, 2804-05, 2807-08, 2810-11, 2813-14, 2816-17, 2819-20, 2822-23, 2824-25, 2827-28, 2830-31, 2833-34, 2836-37, 2839-40, 2842-43, 2845-46, 2848-49, 2851-52, 2854-55, 2857-58, 2860-61, 2863-64, 2866-67, 2869-70, 2872-73, 2875-76, 2878-79, 2881-82, 2884-85, 2887-88, 2890-91, 2893-94, 2896-97, 2899-00, 2901-02, 2904-05, 2907-08, 2910-11, 2913-14, 2916-17, 2919-20, 2922-23, 2924-25, 2927-28, 2930-31, 2933-34, 2936-37, 2939-40, 2942-43, 2945-46, 2948-49, 2951-52, 2954-55, 2957-58, 2960-61, 2963-64, 2966-67, 2969-70, 2972-73, 2975-76, 2978-79, 2981-82, 2984-85, 2987-88, 2990-91, 2993-94, 2996-97, 2999-00, 3001-02, 3004-05, 3007-											

ROW	Judicial Opinion	WKS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
779	Am. Min. Cong. v. U.S. EPA, 307 F.2d 1179	1.68E+19	It is not the court's role to "second-guess the scientific judgments of EPA," New York v. EPA, 852 F.2d 574, 580 (D.C. Cir., 1988), cert. denied, 483 U.S. 1065, 109 S.Ct. 1339, 103 L.Ed.2d 609 (1989), and "[t]he Administrator may apply his expertise to draw conclusions from suspected, but not completely substantiated, relationships between facts, from trends among facts, from correlations between facts, from statistical analysis of facts, from trends among facts, from theoretical projections from imperfect data, from probative preliminary data not yet certifiable as 'fact,' and the like." Ethyl Corp. v. EPA, 541 F.2d 1, 28 (D.C. Cir.) (en banc), cert. denied, 436 U.S. 941, 96 S.Ct. 2682, 49 L.Ed.2d 394 (1978).	Environmental Protection Agency (EPA) and administrator may apply his expertise to draw conclusions from suspected, but not completely substantiated, relationships between facts, from trends among facts, from correlations between facts, from statistical analysis of facts, from trends among facts, from theoretical projections from imperfect data, from probative preliminary data not yet certifiable as fact, and the like.	Is it the role of the court to second-guess the scientific judgments of the Environmental Protection Agency (EPA)?	005029.docx	LEGALASE-00117215- LEGALASE-00117216	Confirmed, SA	0.38	839 0	15,344 0	14,873 0	21,876 1	9,029
780	Williamson v. City of Hayes, 275 Kan. 360	386e-2	Trespass is an intentional tort. United Producers, Inc., v. Earnland, 275 Kan. 360, 362 P.2d 100, 102 (Kan., 1951). The defendant sought to support its action in trespass, it must be established that the defendant intended to have the foreign matter intrude upon the land, where the defendant's act is done with knowledge that it will to a substantial certainty result in the entry of foreign matter.	In order to support an action in trespass, it must be established that the defendant intended to have the foreign matter intrude upon the land, or the defendant's act is done with knowledge that it will to a substantial certainty result in the entry of foreign matter.	"To constitute a trespass it is necessary that the defendant intended to have the foreign matter intrude upon the land, or that the defendant's act is done with the knowledge that it will to a substantial certainty will result in the entry of foreign matter to constitute a trespass action?"	002322.docx	LEGALASE-00119833- LEGALASE-00119834	Confirmed, SA	0.43	0	1	0	1	
781	Conbern v. United States, 384 A.2d 26	203e+50	Unlike circumstances of justification or excuse, legally recognized defenses to homicide are limited to those specifically enumerated by statute. Such circumstances may, however, serve to "mitigate the degree of criminality" of a homicide otherwise committed with an intent to kill, an intent to injure, or in conscious and wanton disregard of life. Bradford, supra, 344 A.2d at 215. Though such mitigating circumstances most frequently arise "where the killer has been provoked or is acting in the heat of passion, with the latter including fear, resentment and terror, as well as rage and anger," id., mitigation may also be found in defense of another and "[a] killing [is] committed in the mistaken belief that one may be in mortal danger." Logan, supra, 483 A.2d at 671, (quoting Bradford, supra, 344 A.2d at 215). See also 2 W. LaFare & A. Scott, supra note 6, *71.1, at 271-76 R.; Perkins & R. Boyce, supra, at 102-03. The mitigation principle is predicated on the legal system's recognition of the "weaknesses" or "infirmary" of human nature. It is not a license to commit crimes, nor does it require the actor to act in a particular manner, as well as being held that those who kill under "extreme mental or emotional disturbance for which there is reasonable explanation or excuse" are less "morally blameworthy" than those who kill in the absence of such influences. Model Penal Code, supra, ¶ 210.3 comment 5, at 53, 54 (internal quotation marks omitted); see also Mulaney v. Wilbur, supra, 421 U.S. at 698, 95 S.Ct. at 1385 (citation omitted). Legally recognized mitigating factors serve to exonerate or mitigate the culpability of the actor, but they do not alter the basic nature of the perpetrator's mental state, and thus serve as a bar to a conviction for murder.	Unlike circumstances of justification or excuse, legally recognized defenses to homicide are limited to those specifically enumerated by statute. They may serve to reduce the degree of criminality of a homicide which was otherwise committed with an intent to kill, an intent to injure, or in conscious and wanton disregard of life.	Do legally recognized mitigating factors constitute a total defense to a murder charge?	002870.docx	LEGALASE-00119775- LEGALASE-00119776	Confirmed, SA	0.82	0	1	0	1	
782	Ponderstein v. Atchison, 934 F. Supp. 424	231H+1524	Congress enacted the RLAA "to promote stability in labor-management relations by providing a comprehensive mechanism for prompt and orderly settlement of two classes of disputes, which include employer grievances and contract interpretation disputes." 45 U.S.C. § 153a; see Brotherhood of R.R. Trainmen v. Denver & Rio Grande Western R.R. Co., 280 F.2d 266, 268 (10th Cir.), cert. denied, 386 U.S. 566, 81 S.Ct. 1925, 6 LEd.2d 1256 (1963). The RLAA "establishes a mandatory arbitral mechanism for 'the prompt and orderly settlement' of two classes of disputes." Hawaiian Airlines, Inc., 512 U.S. at 105, 114 S.Ct. at 2245-46 (quoting 45 U.S.C. § 153a). The first class of disputes includes "grievances arising out of employment conditions"; the second class, "minor" disputes, "grow[s] out of grievances or out of the interpretation or application of [collective bargaining] agreements covering rates of pay, rules, or working conditions." 45 U.S.C. § 153a; see Consolidated Rail Corp. v. Railway Labor Executives Ass'n., 491 U.S. 299, 302, 109 S.Ct. 2477, 2480, 105 LEd.2d 2501 (1989) ("major disputes seek to create contractual rights, minor disputes enforce them"). This distinction is critical to find that the RLAA provides a mandatory arbitration scheme for the first class of disputes and exclusive for "minor" disputes. Thus, if an action can be characterized as a "minor" dispute, then the courts generally lack jurisdiction to hear it." Davies v. American Airlines, Inc., 971 F.2d 463, 465 (10th Cir. 1992) (citations omitted), cert. denied, 508 U.S. 950, 113 S.Ct. 2439, 124 LEd.2d 657 (1993). Santa Fe apparently considers the controversy at hand a "minor" dispute.	RLA establishes mandatory arbitral mechanisms for prompt and orderly settlement of two classes of disputes, which include employer grievances and contract interpretation disputes "growing out of grievances or out of interpretation or application of collective bargaining agreements (CBA) covering rates of pay, rules, or working conditions. Railway Labor Act, § 5, 48 U.S.C.A. § 153a.	What are the two mandatory arbitral mechanisms established by the Railway Labor Act (RLA)?	00792.docx	LEGALASE-00011568- LEGALASE-00011570	Confirmed, SA, Sub	0.75	0	1	1	1	1
783	Grega v. Pettengill, 123 F. Supp. 34517	249e+401	The mere fact that a criminal tribunal found probable cause normally provides a presumption that probable cause existed in the context of a subsequent wrongful prosecution claim." Lay v. Pettigrell, 191 Va. 381, 382, 133 So.2d 1130, 1147 (2001). That presumption may be rebutted only by evidence that the [probable cause finding] was procured by fraud, perjury, malice, or other police misconduct." Manganiello v. City of New York, 632 F.3d 149, 162 (2d Cir. 2020); see also Lay, 38 A.3d at 1147 ("[T]his presumption of probable cause is rebuttable only if a plaintiff can demonstrate that the earlier finding of probable cause was based on misleading, fabricated, or otherwise improper evidence."). In considering a motion to dismiss, the court must determine whether, "on the facts asserted in [Grega's] complaint, appropriate prosecutive discretion would have led the State to prosecute." Gresham-Hubbard Police Dept. v. Smith, 539 F. Supp. 2d 525, 580 (D.Vt. 2003). Probable cause is a complete defense to a claim of malicious prosecution if it is not later nullified by information establishing the defendant's innocence. Betts v. Sherman, 751 F.3d 78, 78 (2d Cir. 2014).	Under Vermont law, mere fact that a criminal tribunal found probable cause normally provides a presumption that probable cause existed in the context of a subsequent malicious prosecution claim; that presumption may be rebutted only by evidence that the probable cause finding was procured by fraud, perjury, the suppression of evidence, or other police conduct undertaken in bad faith.	How can the presumption of probable cause in a subsequent malicious prosecution claim be rebutted?	002930.docx	LEGALASE-00119830- LEGALASE-00119831	SA, Sub	0.68	0	0	1	1	

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784	Sheffield v. Gattwell, 101 F.2d 351	2492-2493	The complaint is devoid of averment that defendants other than the justice fraudulently procured by perjury testimony or other false evidence of guilt of the defendant justice and his consequent proper acquittal by directed verdict, there remained thereafter a complaint against Mr. Pankle and her attorney, which contained no averment that they or either of them had by fraudulent or perjured testimony or other fraudulent means, procured the conviction in the justice court, except as follows from the unproved allegation of conspiracy between them and the justice. Yet, under the established law of Illinois, that conviction is fraudulent means, procured the conviction in the justice court, and complete defense to a suit for malicious prosecution, unless it is overcome by evidence that it was obtained by false testimony, fraud, corrupt practices or unlawful or unjustifiable means on the part of the one procuring the conviction. McElroy v. Catholic Press Co., 254 Ill. 290, 98 N.E. 527.	Under Illinois law, conviction is prima facie evidence of existence of probable cause for prosecution, and complete defense to suit for malicious prosecution is that conviction was obtained by false testimony, fraud, corrupt practices or unlawful or unjustifiable means on part of one procuring the conviction.	When can one rebut that the conviction is prima facie evidence of probable cause in a malicious prosecution?	002954.docx	LEGALSE-00119840-LEGALSE-00119841	SA, Sub	0.66	839	15,344	14,873	21,876	9,079
										0	0	1	1	
785	Grega v. Pettengill, 123 F. Supp. 2d 517	2492-2493	The main fact that a criminal tribunal found probable cause normally is that the defendant was convicted by a jury and sentenced to prison. Subsequent successful prosecution claim, "v. Pettengill, 191 Vt. 141, 38 A.2d 1139, 1147 (2011)." That presumption may be rebutted only by evidence that the [probable cause finding] was procured by fraud, perjury, the suppression of evidence or other police conduct undertaken in bad faith. Manganello v. City of New York, 612 F.3d 149, 162 (2d Cir.2010); see also Lay, 38 A.3d at 1147 ("This presumption of probable cause is rebuttable only if a plaintiff can demonstrate that the earlier conviction was obtained by fraud, perjury, the suppression of evidence, or other police conduct." 7 In determining whether, "on the facts asserted in [Grega's] complaint, it appears beyond doubt" that there was probable cause to prosecute Grega, Hutchins v. Peterson, 139 F.Supp.2d 575, 580 (D.Vt.2001). Probable cause is a complete defense to a claim of malicious prosecution (if it is not later nullified by information establishing the defendant's innocence. Betts v. Shearman, 751 F.3d 78, 82 (2d Cir.2014).	Under Vermont law, mere fact that a criminal tribunal found probable cause is prima facie evidence of existence of probable cause in a malicious prosecution claim; that presumption may be rebutted only by evidence that the probable cause finding was procured by fraud, perjury, the suppression of evidence, or other police conduct undertaken in bad faith.	Question: How can the presumption of probable cause in a subsequent malicious prosecution claim be rebutted?	Malicious Prosecution - Memo 83 - 753.docx	LEGALSE-0009547-LEGALSE-0009548	SA, Sub	0.68	0	0	1	1	
										0	1	0	1	
786	State v. Doucette, 347 Conn. 95	110-413-93	The Connecticut rule, which we reaffirm, is "that, although the confession is evidence tending to prove both the fact that the crime [charged] was committed [by someone, that is, the corpus delicti] and the defendant's agency therein, it is not sufficient of itself to prove the former, and without evidence alunde of facts also tending to prove corpus delicti it is not enough to warrant conviction, and that there must be such corroborative evidence as will when taken in connection with confession establish corpus delicti in mind of trier beyond a reasonable doubt." State v. Skinner, supra (132 Conn. 163, 43 A.2d 771). This appears to be the general rule. 7 Wigmore, op. cit., p. 397. "The independent evidence must tend to establish that the crime charged has been committed and must be material and substantial, but need not be such as would establish the corpus delicti beyond a reasonable doubt apart from the confession. Properly this [extrinsic] evidence should be sufficient to render the confession admissible before the latter is allowed in evidence." State v. Laloche, supra, 116 Conn. 695, 166 A.2d 3. This is in accord with Oppen v. United States, 348 U.S. 84, 93, 75 S.Ct. 158, 99 L.Ed. 101. Neither of the confessions, nor the evidence as to the re-enactment, in effect constituting a third confession, can be treated as extrinsic corroborative evidence of the corpus delicti. "[E]ven two positive confessions of guilt, without independent proof of the corpus delicti, are insufficient to establish the corpus delicti." Brown v. Mississippi, 320 U.S. 45, 55 E. 396, 379, 68 A.2d 33, 117 Conn. 186. Under the evidence of the corpus delicti presented by the state apart from the confessions and the evidence as to the re-enactment and, in the application of our rule, to determine whether such evidence of the corpus delicti was sufficient to authorize the admission of the two confessions.	Although confession is evidence tending to prove both fact that crime charged was committed by someone, that is, the corpus delicti, and defendant's agency therein, it is not sufficient of itself to prove former, and without evidence alunde of facts also tending to prove corpus delicti it is not enough to warrant conviction. And there must be extrinsic corroborative evidence as well when taken in connection with confession establish corpus delicti in mind of trier beyond a reasonable doubt.	"In a prosecution, is the state required to prove defendant's agency?"	Prison - Memo 83 - RK.docx	LEGALSE-0009756-LEGALSE-0009758	Condensed SA	0.77	0	1	0	1	
										0	1	0	1	
787	Dodge v. Kistler, 340 Ill. 209	366-1	"Subrogation is the substitution of one person in the place of another with reference to a lawful claim or right. Subrogation arises by operation of law, where one person is entitled to recover for a loss or injury, and another person has a debt due another person, and the latter is in equity, entitled to the security or obligation held by the creditor whom he has paid. This is called "legal subrogation." Conventional subrogation depends upon a lawful contract, and occurs where one having no interest in or relation to the matter pays the debt of another, and by agreement is entitled to the securities and rights of the creditor so paid." 72 So. text 645.	"Legal subrogation" is the substitution of one person in the place of another with reference to a lawful claim or right, and it arises by operation of law, where one person is entitled to recover for a loss or injury, and another person has a debt due another person, and the latter is in equity, entitled to the security or obligation held by the creditor whom he has paid.	Is subrogation the substitution of one person in place of another with reference to a lawful claim or right?	Subrogation - Memo 114 - VP.docx	ROSS-003308737-ROSS-003308739	Condensed SA	0.42	0	1	0	1	
										0	1	0	1	

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	In re Bill Heard Enterprises, 423 B.R. 771	36e+1	The Court will therefore emphasize equitable subrogation as it is expressed under Alabama law, the forum state, but will also cite to the law of other jurisdictions. Courts have formulated the elements of equitable subrogation in a variety of ways. Under Alabama law, the elements of equitable subrogation are expressed as follows: "(1) the creditor must be discharged by payment of the debt; (2) the creditor must advance the money or provide the security of equal dignity with the prior encumbrance; (3) the whole debt must be paid before subrogation can be enforced; (4) the lender must be ignorant of intervening liens; and (5) the intervening lienor's rights must not be burdened or embarrassed." Ex Parte Lawson, 6 So.3d 7, 12 Ala.2008 (quoting Collier Inv. Co. v. Pilgrim, 421 So.2d 1274 (Ala.Civ.App.1982)). See also Foster v. Porter Bridge Loan Co., Inc., 2009 WL 12305684 (Ala.2009)(citing Ex Parte Lawson, 6 So.3d 7, 12 Ala.2008, and AOD Prod. Credit Union v. State Farm Fire and Accident Insurance Company, 831 So.2d 831 (Ala.Civ.App.2005))(emphasizing that a party's entitlement to equitable subrogation depends on that party's satisfaction of the five elements listed above). While failure to prove any one element is detrimental to a claim for equitable subrogation, the Court finds that Alpha has failed to satisfy four of the five required elements.	Under Alabama law, the elements of equitable subrogation are expressed as follows: (1) The money is advanced at this instance of the debtor in order to extinguish a prior encumbrance, (2) the money is used for that purpose with the just expectation on the part of the lender for obtaining security of equal dignity with the prior encumbrance, (3) the whole debt must be paid before subrogation can be enforced, (4) the lender must be ignorant of intervening liens, and (5) the intervening lienor's rights must not be burdened or embarrassed.	What are the elements of equitable subrogation?	Subrogation - Memo #442 - C - NO.docx	R0SS-00325177-R0S5-003325178	Condensed SA	0.63	839	15_344	34,873	21,876	9,029
788	Bankers Tr. Co. v. Hardy, 281 Ga. 561	36e+1	Subrogation is the substitution of another person in the place of the creditor, so that the person in whose favor it is exercised succeeds to all the rights of the creditor. It is of equitable origin, being founded upon the dictates of refined justice, and its basis is the doing of complete, essential and perfect justice between the parties, and its object is the prevention of injustice.	Subrogation is the substitution of another person in the place of the creditor, so that the person in whose favor it is exercised succeeds to all the rights of the creditor. It is of equitable origin, being founded upon the dictates of refined justice, and its basis is the doing of complete, essential and perfect justice between the parties, and its object is the prevention of injustice.	"Is subrogation the substitution of another person in the place of the creditor, so that the person in whose favor it is exercised succeeds to all the rights of the creditor?"	043706.docx	LEGALCASE-00121365-LEGALCASE-00121371	SA, Sub	0	0	0	1		
790	Lewy v. HUI Operating Co., 924 A.2d 210	36e+3(41)	Subrogation differs from contribution because its operation rests on concepts of primary and secondary liability among obligors. Thus, if acts of indemnification, subrogation allows a insurer to succeed to a right of payment flowing to its insured, while an entity seeking indemnity must do so in its own right.	Subrogation differs from contribution because its operation rests on concepts of primary and secondary liability among obligors. Thus, if acts of indemnification, subrogation allows a insurer to succeed to a right of payment flowing to its insured, while an entity seeking indemnity must do so in its own right.	"Does subrogation differ from contribution because its operation rests on concepts of primary and secondary liability among obligors, thus, it acts to replace an entire loss, not just a portion, on another party?"	043876.docx	LEGALCASE-00121455-LEGALCASE-00121456	Condensed SA	0.47	0	1	0	1	
791	SIMTS for Justice v. Nuth, 893 F. Supp. 2d 598	22+3+42	First, the RNC asserts immunity defenses under the act of state doctrine and the FSIA. Under the act of state doctrine, "the courts of one state will not question the validity of public acts (acts jure imperii) performed by other sovereigns within their own borders, even when such courts have jurisdiction over a controversy in which one of the litigants has standing to challenge those acts."	Under the act of state doctrine, the courts of one state will not question the validity of public acts, acts jure imperii, performed by other sovereigns within their own borders, even when such courts have jurisdiction over a controversy in which one of the litigants has standing to challenge those acts.	Under the act of state doctrine, will the courts of one state question the validity of public acts, performed by other sovereigns within their own borders, even when such courts have jurisdiction over a controversy in which one of the litigants has standing?"	019735.docx	LEGALCASE-00123807-LEGALCASE-00123808	Condensed SA	0.62	0	1	0	1	
792	United States v. Sum of \$70,990,605.991 F. Supp. 2d 154	22+3+42	Assuming that the Nigerian court had taken some jurisdiction of exclusive jurisdiction, it is nonetheless what the Albanian courts is asserting exclusive jurisdiction over and for what duration. It is not evident from the facts presented that an act of state would need to be invalidated here because the contours of that ostensible act of state have not been defined by the claimants. Even if this court's factual findings must necessarily "cast doubt upon the validity of the foreign sovereign's acts," the act of state doctrine is inapplicable if the foreign act of state does not need to be invalidated. Kripatrik, 493 U.S. at 406, 110 S.Ct. 1077, 118 L.Ed.2d 818 (1990) (quoting Sabatino, 376 U.S. at 42-23, 84 S.Ct. 923).	Even if the domestic court's factual findings must necessarily cast doubt upon the validity of the foreign sovereign's acts, the act of state doctrine is inapplicable if the foreign act of state does not need to be invalidated.	Town if the domestic court's factual findings must necessarily cast doubt upon the validity of the foreign sovereign's acts, is the act of state doctrine inapplicable if the foreign act of state does not need to be invalidated?"	Here national law - Memo # 87 - C - k.docx	R0SS-00328380-R0S5-003283801	SA, Sub	0.76	0	0	1	1	
793	DuDaabin v. Clicos Sys., 2 F. Supp. 3d 717	22+3+42	The act of state doctrine is premised on the principle that "every sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another, done within its own territory."	The act of state doctrine is premised on the principle that every sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another, done within its own territory.	"Is every sovereign state bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another, done within its own territory?"	019894.docx	LEGALCASE-00122676-LEGALCASE-00122677	Condensed SA	0.77	0	1	0	1	

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794	<i>Joivc v. U.S. Servs.</i> , 69 F. Supp. 347, 50	22:1-42	Similarly, the act of state doctrine is an affirmative defense, on which the defendant carries the burden of proof. See <i>Five Oil Spill by Amoco Cadiz Off Coast of France on March 15, 1978</i> , 531 F. Supp. 161 (N.D.Ill.1979). "The act of state doctrine is a judicial rule that generally forbids an American court to question the act of a foreign sovereign that is lawful under the sovereign's laws." <i>Nocula v. UOS Corp.</i> , 520 F.3d 719, 727-78 (7th Cir.2008) (internal citations omitted). Courts typically consider three factors in determining whether the doctrine applies: (1) The degree of international consensus regarding the acts of the foreign government challenged by the suit; (2) The implications of the suit for United States foreign policy; and (3) whether the government accused of perpetrating the alleged wrongful acts remains in existence. See <i>Abidat v. UOS Corp.</i> , 320 F.3d 719, 727-78 (7th Cir.2008) (internal citations omitted). See generally <i>Banko Nacional de Cuba v. Sabatino</i> , 376 U.S. 398, 428, 84 S.Ct. 923, 11 L.Ed.2d 804 (1964) ("The consensus concerning a particular area of international law, the more appropriate it is for the judiciary to render decisions regarding it, since the act of state doctrine is a judicially created doctrine, it is more appropriate to leave it to the executive branch to decide whether the act of state principle not inconsistent with the national interest or with international justice").	Courts typically consider three factors in determining whether the act of state doctrine applies: (1) the degree of international consensus regarding the acts of the foreign government challenged by this suit; (2) the implications of the suit for United States foreign policy; and (3) whether the government accused of perpetrating the alleged wrongful acts remains in existence.	What factors do courts consider in determining whether the act of state doctrine applies?	International Law - Memo # 135 - C - SA.docx	ROSS-00331643-ROSS-00331645	SA, Sub	0.75	839	0	15,344	14,873	21,876	9,029	
795	<i>Rapture Shipping, Ltd. v. AroundFuel Trading, Islamic Republic of Iran</i> , 2001 F. Supp. 2d 369	22:1-42	"Under the principles of international comity, United States courts ordinarily refuse to review acts of foreign governments and defer to proceedings taking place in foreign countries, allowing those acts and proceedings to have extraterritorial effect in the United States." <i>Parvin Banker Assoc., Ltd. v. Banco Popular Del Peru</i> , 109 F. 3d 850, 854 (2d Cir.1997). The courts of this circuit have been particularly consistent in practicing comity toward foreign judgments and proceedings. See <i>S.C. Chimeron S.A. v. Veleo Enters. Ltd.</i> , 367 F.Supp.2d 206, 211 (S.D.N.Y.1999).	Under the principles of international comity, United States courts ordinarily refuse to review acts of foreign governments and defer to proceedings taking place in foreign countries, allowing those acts and proceedings to have extraterritorial effect in the United States.	"Under the principles of international comity, do United States courts ordinarily refuse to review acts of foreign governments and defer to proceedings taking place in foreign countries?"	International Law- Memo # 222 - C - MJS.docx	ROSS-003298579-ROSS-003298580	Condensed, SA	0.52	0	1	0	1			
796	<i>Kadran v. Cent. Bank of Islamic Republic of Iran</i> , 961 F. Supp. 241, 185	22:1-42	"The act of state doctrine 'prohibits the courts of this country from inquiring into the validity of the public acts of a recognized foreign sovereign power committed within its own territory.' " <i>McClesion Corp. v. Islamic Republic of Iran</i> , 672 F.3d 1066, 1073 (D.C.Cir.2021) (cert. denied, "U.S. ", 133 S.Ct. 1582, 185 L.Ed.2d 577 (U.S.2023) (quoting <i>Banko Nacional de Cuba v. Sabatino</i> , 376 U.S. 398, 401, 84 S.Ct. 923, 11 L.Ed.2d 804 (1964)). The doctrine applies when "the relief sought or the defense interposed would [require] a court in the United States to declare invalid the official act of a foreign sovereign performed within its own territory." <i>W.S. Kirkpatrick & Co., Inc. v. Environmental Tectonics Corp.</i> , 493 U.S. 400, 405, 110 S.Ct. 701, 107 L.Ed.2d 816 (1990). "Act of state issues only arise when a court must decide that is, when the outcome of the case turns upon the effect of official action by a foreign sovereign." <i>Id.</i> , at 406, 1105 Ct. 701. "When it applies, the doctrine serves as a 'rule of decision for the courts of this country,' which requires courts to deem valid the acts of foreign sovereigns taken within their own jurisdictions." <i>McClesion Corp.</i> , 472 F.3d at 1066 (quoting <i>Kirkpatrick</i> , 493 U.S. at 406, 409, 110 S.Ct. 701).	Act of state issues only arise when a court must decide that is, when the outcome of the case turns upon, the effect of official action by a foreign sovereign; when it applies, the doctrine serves as a rule of decision for the courts of the United States, which requires courts to deem valid the acts of foreign sovereigns taken within their own jurisdictions.	Does an act of state issue only arise when a court must decide the effect of official action by a foreign sovereign?	International Law - Memo # 242 - C - CR.docx	ROSS-003300592-ROSS-003300594	Condensed, SA, Sub 0.71	0	1	1	1	1	1		
797	<i>Fayssand Ltd. v. Waller Fuller Aircraft Sales</i> , 748 F. Supp. 1365	22:1-42	"To qualify as an act of state, it is necessary to prove that the act "occurred as a result of a considered policy determination by a government to give effect to its political and public interest" matters that would have significant impact on American foreign relations." <i>Mannington Mills, Inc. v. Cogolomul Corp.</i> , 555 F.2d 1287, 1295 (84d Cir.1979). The Court in <i>Id.</i> stated that the act of state doctrine is a judicially created doctrine, and issues only arise when a court must decide that is, when the outcome of the case turns upon 'the effect of official judgment in a foreign sovereign's grant of a patent. Similarly, a foreign judicial judgment in a patent infringement suit is not an act of state." <i>Timberlane Lumber Co. v. Bank of America</i> , 549 F.2d 597, 607'08 (9th Cir.1976). Nor does a party's initiation of foreign judicial proceedings amount to an act of state. <i>Domestic Americana Bohio v. Gulf & Western</i> , 473 F. Supp. 680, 689 (S.D.N.Y.1979). And as the Supreme Court stressed in <i>Alfred Dunhill of London, supra</i> , a foreign naval officer's operation of the foreign sovereign's ship on behalf of the sovereign does not give rise to an act of state. 452 U.S. at 693-94, 96 S.Ct. at 1,360-61.	To qualify as an act of state, it is necessary to prove that the act occurred as a result of considered policy determination by government to give effect to its political and public interest, matters that would have significant impact on American foreign relations.	"To qualify as an act of state, is it necessary to prove that the act occurred as a result of a considered policy determination by government to give effect to its political and public interest, matters that would have significant impact on American foreign relations?"	International Law- Memo # 372 - MC.docx	ROSS-003284239-ROSS-003284240	Condensed, SA	0.76	0	1	0	1	1		
798	<i>United States v. Rashied</i> , 802 F. Supp. 312	22:1-391	Defendants contend that "1903, as applied to them in this case, is unconstitutional under the standard discussed in <i>United States v. Davis</i> , 905 F.2d 245 (9th Cir.1990), cert. denied 498 U.S. 1047, 111 S.Ct. 753, 112 L.Ed.2d 773 (1991); accord, <i>United States v. Atkins</i> , 946 F.2d 608 (9th Cir.1995); <i>United States v. Peterson</i> , 832 F.2d 486 (9th Cir.1987). In <i>Davis</i> , the court stated that the act of state doctrine is a judicially created doctrine, and issues only arise when a court must decide that is, when the outcome of the case turns upon 'the effect of official action by a foreign sovereign.'" <i>Id.</i> , at 406, 1105 Ct. 701. "When it applies, the doctrine serves as a 'rule of decision for the courts of this country,' which requires courts to deem valid the acts of foreign sovereigns taken within their own jurisdictions." <i>McClesion Corp.</i> , 472 F.3d at 1066 (quoting <i>Kirkpatrick</i> , 493 U.S. at 406, 409, 110 S.Ct. 701).	In order to be constitutionally applied, statute punishing conduct outside United States territory must clearly indicate intent to give statute extraterritorial effect and must not violate due process. U.S.C.A. Const.Amend. 5.	"In order to be constitutionally applied, must a statute punishing conduct outside United States territory clearly indicate an intent to give statute extraterritorial effect and must not violate due process?"	020612.docx	LEGAEASE-00123979-LEGAEASE-00123980	Condensed, SA, Sub 0.77	0	1	1	1	1	1		

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799	In re Estate of Cullen, 118 Ohio App. 3d 256	307A+3	A motion in limine, if granted, is an interlocutory ruling by the trial court affecting its anticipatory judgment of admissibility of evidence. See, e.g., State v. Smith, 138 Ohio App.3d 443, 446, 588 N.E.2d 766, 767-768 (1991). The party who has been temporarily restricted from introducing evidence must seek to introduce it at trial in order to enable the court to make a final determination as to its admissibility and to preserve any objection on record. 28 Ohio St.3d 159, 28 OBR 385, 503 N.E.2d 142, 147, paragraph two of the syllabus.	Motion in limine, if granted, is interlocutory ruling by the trial court affecting its anticipatory judgment of admissibility of evidence. See, e.g., State v. Smith, 138 Ohio App.3d 443, 446, 588 N.E.2d 766, 767-768 (1991). The party who has been temporarily restricted from introducing evidence must seek to introduce it at trial in order to enable the court to make a final determination as to its admissibility and to preserve any objection on record.	Must a party who has been temporarily restricted from introducing evidence seek to introduce it at trial in order to preserve its objection to the evidence's admissibility and to preserve any objection on record?	Pretrial Procedure - Memo 4513 - C - 020601.docx	ROSS-003315046-10255-003315047	Condensed SA	0.39	839	15,344	14,873	21,876	9,029
800	Glewin, Club Mediterranee S.A., 648 F. Supp. 2d 1263	221+42	The act of state doctrine "confirms the principles of international comity, respect for the sovereignty of foreign nations on their own territory, and the avoidance of embarrassment to the Executive Branch in its conduct of foreign affairs." Id. at 408, 1105.Ct. 701. The doctrine "prohibits the United States courts from reaching the merits of an issue in order to avoid embarrassment of foreign governments in politically sensitive matters and interference with our own foreign policy." Consolidated Development Corp., No. 395-1820 Civ. Graham, at 3 (S.D.Fla. 1975), 537 F.2d 1171, 1176 (11th Cir. 1976), cert. denied, 538 U.S. 1000, 740 F.2d 887, 83 L.Ed.2d 1161 (11th Cir. 1984).	"Act of state doctrine" prohibits the United States courts from reaching the merits of an issue in order to avoid embarrassment of foreign governments in politically sensitive matters and interference with foreign policy.	Does the act of state doctrine prohibit the United States courts from reaching the merits of an issue in order to avoid embarrassment of foreign governments in politically sensitive matters and interference with foreign policy?	International Law - Memo 2 288 - C - 020601.docx	ROSS-003315046-10255-003328272	Condensed SA	0.67	0	1	0	1	
801	MMA Consultants I v. Republic of Peru, 245 F. Supp. 34486	221+42	The act of state doctrine "confirms presumptive validity on certain acts of foreign sovereigns by rendering non-justiciable claims that challenge such acts." Allied Bank Int'l v. Banco Credito Agrario de Santiago, 737 F.2d 516, 520-2d Cir. 1985). Its applicability depends, in part, on whether judicial examination of the sovereign's act "would embarrass or hinder the executive in the realm of foreign relations." Id. at 521.	The act of state doctrine confers presumptive validity on certain acts of foreign sovereigns by rendering non-justiciable claims that challenge such acts. Its applicability depends, in part, on whether judicial examination of the sovereign's act would embarrass or hinder the executive in the realm of foreign relations.	Does the act of state doctrine operate to confer presumptive validity on certain acts of foreign sovereigns by rendering no justiciable claims that challenge such acts?	Q20351.docx	LEGALASE-00124493-LEGALASE-00124494	Condensed SA	0.25	0	1	0	1	
802	Jovic v. L-3 Servs., 69 F. Supp. 34750	221+42	Similarly, the act of state doctrine is an affirmative defense, on which the defendant carries the burden of proof. See In re Oil Spill by Amoco Cadiz Off Coast of France on March 16, 1978, 491 F.Supp. 161 (N.D.Ill.1979). "The act of state doctrine is a judicial rule that generally forbids an American court to question the act of a foreign sovereign that is lawful under the sovereign's law." Nocoliv v. U.S. Com. 520 F.3d 737, 727-728 (11th Cir. 2016). The act of state doctrine is not a jurisdictional bar. The factors in determining whether the doctrine applies: (1) the degree of international consensus regarding the acts of the foreign government challenged by the suit; (2) the implications of the suit for United States foreign relations; and (3) whether the government accused of perpetrating the alleged wrongful act remains in existence. See Abula v. Abubakar, No. 02-C-6953, 2005 WL 3050607, at (N.D.Ill. Nov. 4, 2005) (internal citations omitted). See generally Banco Nacional de Cuba v. Morgan Guaranty, 384 U.S. 363, 165 S.Ct. 1019, 16 L.Ed.2d 578 (1966). It should be apparent that the greater the degree of judicial or congressional consensus concerning a particular area of international law, the more appropriate it is for the judiciary to render decisions regarding it, since the courts can then focus on the application of an agreed principle to circumstances of fact rather than on the sensitive task of establishing a principle not inconsistent with the national interest or with international justice").	Courts typically consider three factors in determining whether the act of state doctrine applies: (1) the degree of international consensus regarding the acts of the foreign government challenged by the suit; (2) the implications of the suit for United States foreign relations; and (3) whether the government accused of perpetrating the alleged wrongful act remains in existence.	What are the factors to consider in determining whether the acts of state doctrine bars suit against foreign state?	Q20409.docx	LEGALASE-00125393-LEGALASE-00125394	SA, Sub	0.75	0	0	1	1	
803	Siderman de Blake v. Republic of Argentina, 916 F.2d 689	221+42	In contrast to the jurisdictional nature of foreign sovereign immunity under the FISA, "[t]he act of state doctrine is not a jurisdictional limit on courts." Liu, 892 F.2d at 1431. The doctrine reflects the prudential concern that the courts, if they question the validity of sovereign acts taken by foreign states, may be interfering with the conduct of American foreign policy by the Executive and Congress. W.S. Kirkpatrick & Co. v. Environmental Tectonics, 493 U.S. 409, 110 S.Ct. at 704, 107 L.Ed.2d 816 (1990); Liu, 892 F.2d at 1433. The act of state doctrine is a principle or rule of decision that the courts apply in deciding cases within their jurisdiction. Environmental Tectonics, 493 U.S. at 409, 110 S.Ct. at 705, 706-07; see also West v. Multibanco Comerco, S.A., 807 F.2d 820, 827 (9th Cir. 1987) (describing act of state doctrine as "combination of justifiability and abstinence rule"); cert. denied, 482 U.S. 906, 107 S.Ct. 2483, 39 L.Ed.2d 375 (1987). In terms of the Federal Rules of Civil Procedure, the act of state doctrine is not a jurisdictional bar to the filing of a lawsuit. See, e.g., Timberlane Lumber Co. v. Bank of America, N.T. & S.A., 549 F.2d 597, 602 (9th Cir. 1976). If a court lacks jurisdiction over a case involving a foreign state, the act of state doctrine never comes into play. "Because sovereign immunity is jurisdictional and the act of state doctrine is not, we must consider sovereign immunity before reaching the act of state doctrine." Ovi Strecher v. Banco Central de Nicaragua, 770 F.2d 1385, 1389 (5th Cir. 1985), cert. denied, 479 U.S. 1000, 64 L.Ed.2d 578 (1984). The act of state doctrine is not a jurisdictional bar to the filing of a lawsuit. Matter jurisdiction decided under FISA before addressing district court's act of state ruling).	"Act of state doctrine" is not a jurisdictional limit on courts, but reflects prudential concern that the courts, if they question the validity of sovereign acts by foreign states, may be interfering with the conduct of American foreign policy by the Executive and Congress; doctrine does not bar action for lack of subject matter jurisdiction but for failure to state claim on which relief can be granted. Fed.Rules Civ.Procedure 120(b)(1)-(6), 28 U.S.C.A.	"Is the act of state doctrine not a jurisdictional limit on courts, but a reflection of a prudential concern that the courts may be interfering with the conduct of American foreign policy by the Executive and Congress?"	Q20416.docx	LEGALASE-00124777-LEGALASE-00124778	Condensed SA, Sub 0.75	0	1	1	1	1	
804	Chibombo & Co. v. Bank of Jamaica, 648 F. Supp. 1393	221+42	Defendants also claim that this action is nevertheless barred under the act of state doctrine. The act of state doctrine requires that a court, after determining that it has jurisdiction over the case, refrain from reaching the merits of a case if in doing so it would need to judge the validity of the public acts of a foreign sovereign state performed within its own territory. Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 84 S.Ct. 923, 11 L.Ed.2d 804 (1964). Thus, under the act of state doctrine, a Court must analyze the conduct not only of the Defendant itself, but also of the government behind it.	Act of state doctrine requires that court, after exercising jurisdiction, nevertheless decline to decide merits of case if in doing so it would be required to judge validity of public acts of sovereign state performed within its own territory.	Does the act of state doctrine require that a court decline to decide the merits of a case if in doing so it would be required to judge the validity of public acts of sovereign state performed within its own territory?	Q20561.docx	LEGALASE-00124434-LEGALASE-00124435	Condensed SA	0.59	0	1	0	1	

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805	Rosman v. Morasco, 115 Conn. App. 234	307A+3	We first set forth our standard of review. "[T]he motion in limine...has generally been used in Connecticut courts to invoke a trial judge's discretion, and prevent occurrence that might unnecessarily prejudice the right of any party to a fair trial. The trial court's ruling on evidentiary matters will be overturned only upon a showing of a clear abuse of the court's discretion. We will make every reasonable presumption in favor of upholding the trial court's ruling, and only upset it for a manifest abuse of discretion. [Thus, our] review of such rulings is limited to the questions of whether the trial court correctly applied the law and reasonably could have reached the same conclusion." (Citation omitted.) Conn. App. 88, 128, 956 A.2d 1145 (2008). In this case, however, the plaintiff's motion in limine sought to preclude evidence on the basis of the statute of limitations. "Whether a party's claim is barred by the statute of limitations is a question of law that requires our plenary review." Bellemare v. Wachovia Mortgage Corp., 94 Conn.App. 593, 894 A.2d 335 (2006), aff'd, 284 Conn. 19, 951 A.2d 916 (2007). Thus, our review of the court's application of the statute of limitations is plenary.	The motion in limine has generally been used in Connecticut courts to invoke a trial judge's inherent discretionary powers to control the trial and prevent occurrence that might unnecessarily prejudice the right of any party to a fair trial.	Has the motion in limine generally been used in courts to invoke a trial judge's inherent discretionary powers to exclude evidence at trial?	Pretrial Procedure - Memo # 534 - C - 558.docx	R055-00323383-R055-00323383	Condensed, SA	0.8	839 0	15,344 0	14,873 0	21,876 1	9,079
	Vaughan v. Greater Huntington Park & Recreation Dist., 223 W. Va. 583	307A+3	The order granting the motion in limine is simply an evidentiary pre-trial ruling regarding admissibility of testimony related to the issue of damages. "A motion in limine is a procedure which enables the trial court to become acquainted with a potentially troublesome evidentiary issue in order to prevent the offer of the evidence in order to prevent the jury from being exposed to inadmissible evidence." Daniel v. Streane, 183 W.Va. 95, 103794, 394 S.E.2d 79, 877 88 (1990). As such, the resulting order is not a final judgment because it obviously is not dispositive of the entire suit, it does not conclude proceedings on a claim raised in the suit, nor does it release a party from all or part of the suit.	A motion in limine is a procedure which enables the trial court to become acquainted with a potentially troublesome evidentiary issue in advance of the offer of the evidence in order to prevent the jury from being exposed to inadmissible evidence.	Is a motion in limine a procedure which enables the trial court to become acquainted with a potentially troublesome evidentiary issue in advance of the offer of the evidence in order to prevent the jury from being exposed to inadmissible evidence?	Pretrial Procedure - Memo # 630 - C - 558.docx	R055-003233505-R055-003233506	Condensed, SA	0.65	0 1	0 1	0 1	1 1	
806	Blueside Katharine Harp, As'n of Ohio v. Guthrie, 3 Ohio App. 3d 908	307A+3	While a motion in limine is a means of preventing prejudicial evidence from being presented and understood, a motion in limine is not used in two different ways: (1) as the equivalent of a motion to suppress evidence, which is either not competent or improper because of some unusual circumstance; and (2) as a means of raising objection to an area of inquiry to prevent prejudicial questions and statements until the admissibility of the questionable evidence can be determined during the course of the trial. Part of the confusion concerning motions in limine arises from the two different purposes it can serve.	Motion in limine may be used as a substitute for motion to suppress evidence, which is either not competent or improper because of some unusual circumstances, and as a means of raising objection to area of inquiry to prevent prejudicial questions and statements until admissibility of questionable evidence can be determined during course of trial.	Is a motion in limine a means of preventing prejudicial questions and statements until the admissibility of the questionable evidence can be determined during the course of the trial?	030901.docx	LEGALCASE-001231712-LEGALCASE-001231718	Condensed, SA	0.44	0 1	0 1	0 1	1 1	
808	Chavez v. Ameritrust Mortg. Co., 155 N.H. 19	366+1	Generally, the doctrine of subrogation has its origins in equity. A party's right to subrogation can arise either by contract, statute, or common law or equitable principles. The doctrine of subrogation presupposes the payment of a debt by a party secondarily liable therefor, who thereby acquires an equitable right to be reimbursed by the principal debtor and for the purpose of making this right effective is invested with all the rights which the creditor had against him (the principal debtor). The purpose behind the doctrine of subrogation is to prevent the principal debtor from being reimbursed by the one who in good conscience ought to pay it. It also prevents (individuals) from recouping a windfall. In any subrogation case, the burden of proving entitlement is on the subrogee, which generally includes proof of: the existence and applicability of equitable principles or contractual provisions as to subrogation and reimbursement.	The purpose behind subrogation is to place the responsibility where it ultimately should rest by compelling payment by the one who in good conscience ought to pay it; it also prevents individuals from recouping a windfall.	Is the purpose behind subrogation to place the responsibility where it ultimately should rest by compelling payment by the one who in good conscience ought to pay it and to prevent individuals from recouping a windfall?	Subrogation - Memo # 419 - C - SA.docx	R055-003233758-R055-003233759	Condensed, SA	0.77	0 1	0 1	0 1	1 1	
	Jorge v. Travelers Indem. Co., 947 F. Supp. 150	366+1	In general, subrogation is an equitable rather than a contractual doctrine applied in the interests of justice when one who is not a volunteer pays an obligation which should be imposed on another. Pearlmann v. Reliance Ins. Co., 371 U.S. 132, 137 n. 12, 83 S.Ct. 232, 235 n. 12, 9 L.Ed.2d 150 (1962) (citing Memphis & L.R.R. Co. v. Dow, 120 U.S. 287, 301-02, 7 S.Ct. 482, 488-89, 30 L.Ed. 595 (1887)). Generally, subrogation applies where a party, "not acting voluntarily, but under some compulsion," pays a debt or obligation of another, and the payment is made in full satisfaction of the "requirement and good conscience ought to be discharged by the latter." See, e.g., First Nat'l City Bank v. United States, 212 U.S. 357, 548 F.2d 928, 936 (1977) (citing Compania Anonima Venezolana De Navegacion v. A.I. Perez Export Co., 308 F.2d 692, 697 (5th Cir. 1962)), cert. denied, 371 U.S. 942, 83 S.Ct. 321, 9 L.Ed.2d 276 (1962)); see also Restatement (First) of Restitution - §62 (1936) ("When a person discharges an obligation owed by another...and does so officiously, he is not entitled to reimbursement by the obligor..."). See also, e.g., First Nat'l City Bank v. United States, 212 U.S. 357, 548 F.2d 928, 936 (1977) (citing Compania Anonima Venezolana De Navegacion v. A.I. Perez Export Co., 308 F.2d 692, 697 (5th Cir. 1962)). The bank's legal obligation or liability to pay and having no interest menaced by the continuing existence of the debt, is a stranger, and if he pays the debt is a mere volunteer.").	Generally, subrogation applies where party, not acting voluntarily but under some compulsion, pays debt or discharges obligation for which another is primarily liable and which in equity and good conscience ought to be discharged by the latter.	Does subrogation apply where a party not acting voluntarily but under some compulsion, pays a debt or discharges an obligation for which another is primarily liable and which in equity and good conscience ought to be discharged by the latter?"	044370.docx	LEGALCASE-00125519-LEGALCASE-00125520	Condensed, SA	0.83	0 1	0 1	0 1	1 1	

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ROW	Judicial Opinion	WIKMS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
	Wilson v. McNeely, 302 Ga. App. 213	307A+746	In Ambler v. Archer, 230 Ga. 281, 288-290, 196S.L2d 858 (1973), the Supreme Court addressed "what sanctions should attach to disobedience of the order of the court directing the parties to agree on a pre-trial order, or upon the failure of counsel to attend a pre-trial conference." The defendant precluded from introducing evidence relating to his pre-trial order which was finally entered." Id at 288-289, 196S.L2d 858.	The trial court must have the power "to impose appropriate sanctions to make effective its pre-trial orders; contempt may at times be proper, whereas, in an extreme case, the plaintiff's action may be dismissed or the defendant precluded from introducing evidence relating to his pre-trial order which was finally entered. Remedies are too drastic if such sanctions are appropriate."	Is it within the power of the court to impose appropriate sanctions to make effective its pretrial orders?	026667.docx	LEGALCASE-00130473- LEGALCASE-00130474	Condensed SA	0.59	839 0	15,344 0	14,873 0	21,876 1	9,029
815			After recognizing that the trial court must have the power "to impose appropriate sanctions to make effective its pre-trial orders," the Supreme Court noted that " "[contempt may at times be proper; and in an extreme case the plaintiffs' action may be dismissed or the defendant precluded from introducing evidence relating to his defense, but these remedies are too drastic if such sanctions are appropriate." "(Emphasis supplied). Id. at 289, 196S.L2d 858.	Determination of elements entering into imposition of tax, including selection of property to be taxed, determination of basis for measurement of tax, and definition of purpose for which levied, is legislative function, while steps taken for assessment and collection, such as valuation of property pursuant to fixed rules, extension, assessment, enforcement, and adjustment, are more ministerial, delegable to other than governmental agencies.	Does every system of taxation consist of a legislative function and machinery delegable to other than governmental agencies?	Taxation - Memo of 98 - C - SU.docx	ROSS-00328832-ROSS-00328833	Condensed SA	0.64	0 1	0 1	0 1	1 1	
816			Every system of taxation consists of two parts: (1) The elements which enter into the imposition of the tax, and (2) the steps taken for its assessment and collection. The former is a legislative function; the latter is mere machinery, and is delegable to other than governmental agencies. County on taxation (4th ed.) Vol. 1, ¶ 78. The legislative power is vested in the legislature, and the executive power is vested in the governor, for the measurement of the tax, and the definition of the purpose for which the tax shall be levied. Id. On the other hand, powers which are not legislative include the power to value property for taxation pursuant to fixed rules, the power to extend, assess, and collect the taxes, and the power to perform any of the innumerable details of computation, appraisal, and adjustment. Id. "It may be laid down as a general proposition," says the Supreme Court in the cited cases, "that where the rate is mathematically deduced from facts and events occurring within the year and created without reference to the matter of that rate, there is no abdication of the legislative function, but, on the contrary a direct legislative determination of the rate." Michigan Cent. R. Co. v. Powers, 201 U.S. 345, 297, 26S.Ct. 459, 64d 501. Ed. 744.	A motion based on rule regarding voluntary dismissal of a complaint involves three sequential inquiries: (1) whether the matter should be dismissed without prejudice; (2) if so, whether terms should be imposed; and (3) if so, what terms will alleviate any prejudice to the defendant and prevent injury to the efficient administration of justice generated by the ensuing delay and duplication of effort. R. 4.37-7(f).	Does a motion based on rule regarding voluntary dismissal of a complaint involve three sequential inquiries?	027678.docx	LEGALCASE-00132329- LEGALCASE-00132330	SA, Sub	0.61	0 0	0 0	1 1	1 1	
817	Shukis v. Eastbrook, 385 N.J. Super 91	307A+17.1	As we have said, the resolution of these questions rests within the sound discretion of the trial judge. Mack Auto, supra, 224 N.J. Super., at 238, 581 A.2d 1372.	Voluntary dismissal of an entire action deprives the court of both subject matter and personal jurisdiction in that case, except for the limited purpose of awarding costs and statutory attorney fees. West's Ann.Cal.C.C.P. § 581.	"Does a voluntary dismissal of an entire action deprive the court of both subject matter and personal jurisdiction in that case, except for the limited purpose of awarding costs and statutory attorney fees?"	Pretrial Procedure - Memo # 2364 - C - VP.docx	ROSS-003301696-ROSS-003301697	SA, Sub	0.82	0 0	0 0	1 1	1 1	
818	Sighe v. Jack In The Box Inc., 166 Cal. App. 4th 255	307A+17.1	Code of Civil Procedure section 581.3 allows a plaintiff to voluntarily dismiss, with or without prejudice, all or any part of an action before the "actual commencement of trial." "§ 581, subd. (b)(1), (c)." The California Supreme Court stated: "Apert from certain... statutory exceptions, a plaintiff's right to a voluntary dismissal [before commencement of trial pursuant to section 581] appears to be absolute. [Citation.] Upon the exercise of this right, the plaintiff is deemed to have waived her jurisdiction to seek further relief in the dismissed action." Wells v. Marina City Properties, Inc. (1981) 29 Cal.3d 781, 784, 176 Cal.Rptr. 104, 63 P.2d 237 (Wells). Alternatively stated, voluntary dismissal of an entire action deprives the court of both subject matter and personal jurisdiction in that case, except for the limited purpose of awarding costs and statutory attorney fees. (Shapel Industries, Inc. v. Superior Court (2005) 132 Cal.App.4th 1101, 1108, 34 Cal.Rptr.3d 349 (Shapel)); Harris (2005) 132 Cal.App.4th 1101, 1108, 34 Cal.Rptr.3d 349 (Harris).	Defendant's proposed instructions regarding campaign contributions, which may have misled jury into believing anything demonstrated a bribe, were erroneous and misleading. Defendant's proposed instructions erroneously released, however, upon retrial, defendant would be entitled, upon proper request, to an instruction accurately stating distinction between lawful goodwill expenditures and bribes made with criminal intent that the benefit be received by the official as a quid pro quo for some official act.	In a bribery case is a defendant entitled to a jury instruction stating the distinction between lawful goodwill expenditures and bribes made with criminal intent?	014122.docx	LEGALCASE-00133350- LEGALCASE-00133351	Condensed SA, Sub	0.28	0 1	1 1	1 1	1 1	
819	United States v. Head, 641 F.2d 174	63+14	Headnext complains that his proposed instructions regarding campaign contributions were erroneously refused. Defendant's proposed instructions, however, misled jury into believing anything demonstrated a "campaign contribution" could constitute a bribe. Upon retrial, Head would be entitled, upon proper request, to an instruction accurately stating the distinction between lawful "goodwill expenditures" and bribes made with "criminal intent that the benefit be received by the official as a quid pro quo for some official act, pattern of acts, or agreement to act favorably to the donor when necessary." United States v. Arthur, 544 F.2d 730, 735 (4 Cir., 1976).	Whether a rebuttal witness should be included on a pretrial witness list in the absence of specific provision in the pretrial order should be determined on whether the testimony sought to be rebutted could reasonably have been anticipated prior to trial?	Should the question of whether a rebuttal witness should be included on a pretrial witness list in the absence of specific provision in the pretrial order be dependent on whether the testimony sought to be rebutted could reasonably have been anticipated prior to trial?	027091.docx	LEGALCASE-00132840- LEGALCASE-00132841	Condensed SA	0.72	0 1	0 1	0 1	1 1	
820	Alaska Airlines v. Sweatt, 558 P.2d 916	307A+47.1	On witnesses precluded from testifying was Ernest Giliam. Allegedly, Giliam would have rebutted Sweatt's statement that he thought China was part of Alaska Airlines by testifying that Sweatt had chartered directly with China in the past. Whether a rebuttal witness should be included on a pre-trial witness list in the absence of specific provision in the pre-trial order, should be dependent on whether the testimony sought to be rebutted could reasonably have been anticipated prior to trial. Just he was asked whether he believed China to be part of Alaska Airlines. Therefore, it is questionable whether Sweatt's testimony at trial could have been anticipated. The testimony sought to be elicited, however, would at best involve impeachment on a collateral issue. The trial court did not abuse its discretion in excluding the witness.	Whether a rebuttal witness should be included on a pretrial witness list in the absence of specific provision in the pretrial order should be determined on whether the testimony sought to be rebutted could reasonably have been anticipated prior to trial.	Should the question of whether a rebuttal witness should be included on a pretrial witness list in the absence of specific provision in the pretrial order be dependent on whether the testimony sought to be rebutted could reasonably have been anticipated prior to trial?	027091.docx	LEGALCASE-00132840- LEGALCASE-00132841	Condensed SA	0.72	0 1	0 1	0 1	1 1	

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821	In re Sewell, 472 S.W.3d 449	307A+486	Accordingly, where a party moves to withdraw deemed admissions that it never made, due process requires the party opposing withdrawal to prove that the admissions are material and that the party opposing withdrawal has not shown that the admissions are not material. The court ruled from "flagrant bad faith or callous disregard of the rules." See <i>Time Warner, Inc. v. Gonzalez</i> , 411 S.W.3d 661, 666 (Tex.App., San Antonio 2014, pet. denied) (quoting Wheeler, 157 S.W.3d at 443). Thus, although a party moving to withdraw admissions ordinarily must prove the requirements of Rule 198.3, when the deemed admissions are merit-preclusive, good cause exists absent bad faith or callous disregard of the rules by the party seeking the withdrawal. Marino, 355 S.W.3d at 684; <i>Time Warner</i> , 411 S.W.3d at 666. The court concluded that the presentation of the merits would be served by allowing withdrawal of the deemed admissions. See, e.g., Marino, 355 S.W.3d at 634.3	Although a party moving to withdraw admissions ordinarily must prove the requirements of rule allowing for withdrawal of the deemed admissions, the court concluded that the presentation of the merits would be served by allowing withdrawal of the admissions. See, e.g., Marino, 355 S.W.3d at 634.3.	"When the deemed admissions are merit-preclusive, does good cause for withdrawal exist absent bad faith or callous disregard of the rules by the party seeking the withdrawal?"	027611.docx	LEGALASE-00132804-LEGALASE-00132805	SA, Sub	0.66	839	15,344	14,873	21,876	9,079
822	Sampson v. Hunt, 233 Kan. 572	307A+749.1	We first consider the appellant's claim the trial court erred in directing a verdict in favor of the plaintiff on the alter ego issue. This issue was raised in the pretrial order as a question of law to be determined by the court. The appellant argues that the trial court erred in directing a verdict in favor of the defendant pursuant to K.S.A. 60-216.1, that the full force and effect of other orders of the court and controls the subsequent course of trial unless modified to prevent manifest injustice. <i>Black v. Don Schmid Motor, Inc.</i> , 232 Kan. 458, 468, 657 P.2d 517 (1983), and cases cited therein. In <i>Kleberink v. Missouri-Kansas-Texas Railroad Co.</i> , 224 Kan. 437, 442, 581 P.2d 372 (1979), we held the trial court's refusal to give an instruction on right-of-way was correct where the right-of-way was not specifically made an issue in the pretrial order. K.S.A. 60-216 provides in part:	When pretrial order is entered by trial court pursuant to rule, it has full force and effect of other orders of court and controls subsequent course of trial unless modified to prevent manifest injustice. Rule, Civ.Proc., K.S.A. 60-216.	"When pretrial order is entered by trial court pursuant to rule, does it have the full force and effect of other orders of court and controls subsequent course of trial unless modified to prevent manifest injustice?"	Pretrial Procedure - Memo # 2438 - C - VA.docx	ROSS-00300321-HOSS-00300322	Condensed SA, Sub	0.73	0	1	1	1	1
823	The Industries v. Indiana Dept. of State Revenue, 60 N.E.3d 308	307A+486	Trial Rule 36(B) provides a defense against the withdrawal of deemed admissions: a showing of prejudice against the opponent of the withdrawal. See <i>T.R. 36(B)</i> . "If prejudice" does not mean that the party who has obtained the admission will lose the benefit of the admissions; rather, it means that the party has suffered a detriment in the preparation of its case. <i>City of Maricopa v. Peters</i> , 709 N.E.2d 50, 55 (Ind. 2000). The court concluded that the trial court erred in directing a verdict in favor of the defendant pursuant to Trial Rule 36(B) relates to the difficulty a party may face in proving its case because it suddenly needs to obtain evidence to prove a matter that had been deemed admitted. See <i>id.</i> for example, prejudice may be shown in instances "where the party obtaining the admission is unable to produce key witnesses or present important evidence." <i>Id.</i> (citations omitted).	Prejudice contemplated under rule providing defense against withdrawal of deemed admissions on a showing of prejudice against the opponent of the withdrawal relates to the difficulty a party may face in proving its case because it suddenly needs to obtain evidence to prove a matter that had been deemed admitted. Trial Procedure Rule 36(B).	Does the prejudice contemplated under rule governing withdrawals of admissions relates to the difficulty a party may face in proving its case because it suddenly needs to obtain evidence to prove a matter that had been deemed admitted?	028183.docx	LEGALASE-00133018-LEGALASE-00133019	Condensed SA, Sub	0.61	0	1	1	1	1
824	Reid v. Borelli, 393 S.W.3d 362	307A+517.1	"[T]he law firm before the plaintiff has introduced all of its evidence other than rebuttal evidence in the minutes." The granting of a nonsuit is merely a ministerial act, and the trial court generally has no discretion to refuse to dismiss the suit. <i>University of Tex. Med. Branch at Galveston v. Estate of Daria Blackmon ex rel. Shultz</i> , 195 S.W.3d 98, 100 (Tex.2006) (per curiam). A nonsuit is effective when it is filed; it "extrajudicially settles a case or controversy from the moment it is entered and is not an interlocutory order in a pending court." <i>Id.</i> "The purpose of the rule is to prevent the parties from prolonging the trial by the filing of the suit and then withdrawing it." <i>Id.</i> <i>Travis v. Josephim</i> , 335 S.W.3d 860, 862 (Tex.2010). Although rule 162 allows the trial court to hold hearings and enter orders affecting costs, attorneys' fees, and sanctions after a nonsuit is filed, the rule "does not forestall the nonsuit's effect of rendering the merits of the case moot." <i>University of Tex. Med. Branch</i> , 195 S.W.3d at 101.	Although rule regarding nonsuits allow the trial court to hold hearings and enter orders affecting costs, attorney fees, and sanctions after a nonsuit is filed, the rule does not forestall the nonsuit's effect of rendering the merits of the case moot. Vernon's Ann. Texas Rules Civ.Proc., Rule 162.	"Do the civil procedure rule governing nonsuits permit the trial court to hold hearings and enter orders affecting costs, attorney fees, and sanctions, even after notice of nonsuit is filed, while the court retains plenary power?"	028637.docx	LEGALASE-00133078-LEGALASE-00133079	SA, Sub	0.72	0	0	1	1	
825	Tobkin v. State, 777 So. 2d 1160	307A+517.1	We agree with petitioner that the voluntary dismissal dissolved the trial judge's authority to continue with further proceedings on the wife's attorney's motion to withdraw, the husband's motion to disqualify the wife's counsel, and enforcement of the previously-ordered requirement of counseling and attendance at the spouse batterers' program. No permanent injunction requiring counseling or attendance at the Glass House was ever entered. Of course, a voluntary dismissal does not divest the court of jurisdiction to conclude ancillary matters involved in the case after the dismissal. The court concluded that the wife's motion for costs, attorneys' fees, and similar issues. These ancillary matters would include an award of contempt of court matters. See <i>Wells v. State</i> , 654 So.2d 345 (Fla. 3d DCA 1995).	A voluntary dismissal does not divest the court of jurisdiction to conclude ancillary matters involved in the case such as outstanding and unresolved motions for attorney's fees and costs, and similar issues such as unresolved contempt of court matters.	"Does a voluntary dismissal divest the court of jurisdiction to conclude ancillary matters involved in the case such as outstanding and unresolved motions for attorney's fees and costs, and similar issues such as unresolved contempt of court matters?"	028443.docx	LEGALASE-00134456-LEGALASE-00134457	SA, Sub	0.68	0	0	1	1	
826	N. River Inc. Co. of New Jersey v. Grems, 624 S.W.2d 697	307A+476	In deciding whether a failure to timely answer was the result of an accident or mistake, the controlling issue is the absence of a purposeful bad faith failure to answer which would constitute contempt. Contempt, even slight excuse will suffice, especially where delay or prejudice will not result against the opposing party. See <i>Gotcher v. Barnett</i> , 757 S.W.2d 398, 401 (Tex.App., Houston [14th Dist.] 1988, no writ).	In deciding whether failure to timely answer requests for admissions was result of accident or mistake, controlling issue is absence of purposeful bad faith failure to answer which would constitute contempt. Contempt, even slight excuse will suffice, especially where delay or prejudice will not result against opposing party. Vernon's Ann. Texas Rules Civ.Proc., Rule 169.	"Will even a slight excuse suffice as a good cause to withdraw or amend an admission, especially when delay or prejudice to the opposing party will not result?"	028783.docx	LEGALASE-00134603-LEGALASE-00134604	SA, Sub	0.11	0	0	1	1	
827	Graco Robotics v. Oaklawn Bank, 914 S.W.2d 633	307A+486	Requested admissions are deemed admitted unless, within thirty days after service of the request, the party to whom the request is directed serves a written answer or objection. <i>Tex.Civ.P.</i> § 169 (1). The court may grant summary judgment on the merits of the request if the court finds that the party relying on the deemed admissions will not be unduly prejudiced and that presentation of the merits of the action will be subverted thereby.	Court may permit withdrawal of deemed admissions on showing of good cause if it finds that party relying on deemed admissions will not be unduly prejudiced and that presentation of merits of action will be subverted thereby. Vernon's Ann. Texas Rules Civ.Proc., Rule 169, subd. 1.	Can a court permit withdrawal of deemed admissions on showing of good cause if it finds that party relying on deemed admissions will not be unduly prejudiced and that presentation of merits of action will be subverted thereby?	028857.docx	LEGALASE-00134523-LEGALASE-00134524	Condensed SA, Sub	0.37	0	1	1	1	

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833	Zapata v. Universal Care, 107 Cal. App. 4th 1167	307A-517.1	But the right of a plaintiff to voluntarily dismiss an action before commencement of trial is not absolute. Cravens v. State Bd. of Equalization (1997) 53 Cal.App.4th 253, 256; 60 Cal.Rptr. 2d 483. "Code of Civil Procedure section 581 recognizes exceptions to the right, other limitations have evolved through the court's construction of the term "commencement of trial." These exceptions generally arise where the action has proceeded to a determinative adjudication, or to a decision that is tantamount to an adjudication. " (Id., quoting Harris v. Billings (1993) 16 Cal.App.4th 1396, 1402, 20 Cal.Rptr.2d 718.) " Upon the proper exercise of their right, a trial court would thereafter lack jurisdiction to enter further orders in the dismissed action, except for subject matter jurisdiction is void. " (Kee v. Carmon (1999) 71 Cal.App.4th 901, 903, 84 Cal.Rptr.2d 303.)	Exceptions to a plaintiff's right to dismiss an action before commencement of trial generally arise where the action has proceeded to a determinative adjudication, or to a decision that is tantamount to an adjudication; upon the proper exercise of that right, a trial court would thereafter lack jurisdiction to enter further orders in the dismissed action, except for matters such as attorney fees. West's Ann.Cal.C.P. § 58.1.	Do exceptions to a plaintiff's right to dismiss an action before commencement of a trial generally arise where the action has proceeded to a determinative adjudication?	028556.docx	LEGALASE-00135130-LEGALASE-00135131	Condensed, SA	0.55	839	1	14,873	21,876	9,029
										0		0		
									Condensed, SA, Sub	0.05	0	1	1	1
834	Brochtup v. Ithen, 190 Cal. App. 3d 323	307A-483	Where the party served with a request for admissions fails to respond within 30 days, the propounding party may serve the nonresponsive party with notice that the genuineness of the documents or truth of facts alleged is deemed admitted. West's Ann.Cal.C.P. § 84.73, 2003.	Where party served with request for admissions fails to respond within 30 days, propounding party may serve nonresponsive party with notice that genuineness of documents or truth of facts alleged is deemed admitted. West's Ann.Cal.C.P. § 84.73, 2003.	"Where a party served with request for admissions fails to respond within 30 days, can the propounding party serve the nonresponsive party with a notice that genuineness of documents or truth of facts alleged is deemed admitted?"	028646.docx	LEGALASE-00135130-LEGALASE-00135131	Condensed, SA, Sub	0.05	0	1	1	1	1
		State ex rel. State Corp. Comm'n v. Old Ale Co., 43 N.M. 367	371-1-2001	"While the mere declaration contained in a statute that it shall be regarded as a tax of a particular character does not make it such if it is apparent that it cannot be so designated consistently with the meaning and effect of the act, nevertheless the declaration of the law making power is entitled to much weight, and in this statute the intention is expressly declared to impose a special device tax with respect to the carrying on or doing business by such corporation, joint stock company or association, or insurance company. It is therefore apparent, giving all the words of the statute effect, that the tax is imposed not upon the franchises of the corporation, but upon the doing of corporate or insurance business, and with respect to the carrying on thereof, in a sum equivalent to 1 per centum upon the entire net income over and above the cost of doing business. It is accordingly a tax upon the doing of business in this respect. It is a tax upon the doing of business with the delegates which inhere in the peculiarities of corporate or joint stock organizations of the character described. As the latter organizations share many benefits of corporate organization, it may be described generally as a tax upon the doing of business in a corporate capacity. In the case of the insurance companies, the tax is imposed upon the transaction of such business by companies organized under the laws of the United States or any state or territory, as heretofore stated."	A mere declaration contained in a statute that it shall be regarded as a tax of a particular character does not make it such if it is apparent that it cannot be so designated consistently with meaning and effect of act, but declaration of lawmaking power is entitled to much weight.	Does a mere declaration contained in a statute that it shall be regarded as a tax of a particular character make it such if it is apparent that it cannot be so designated consistently with meaning and effect of the act?	045255.docx	LEGALASE-00135113-LEGALASE-00135114	Condensed, SA	0.82	0	1	0	1
835														
836	Friedman v. Knecht, 248 Cal. App. 2d 455	307A-725	In determining whether the remark "related to" the proceedings, we have to keep in mind what the proceedings were: primarily a motion for continuance, with cross-motions for continuance of counsel. Although the Penal Code requires motions for continuance to be made "upon affirmative proof in open court" (Pen.Code, § 1050) and the Code of Civil Procedure specifies that such motions, when based on the absence of evidence, be made on affidavits (Code Civ.Proc. § 595.4), they are quite commonly heard on oral representations by counsel. The matters involved are quite different from those in the case of the latter. West's Ann.Pen.Code, § 1050; West's Ann.Code Civ.Proc. § 595.4.	Although penal code requires motions for continuance to be made upon affirmative proof in open court and code of civil procedure specifies that such motions, when based on absence of evidence, be made on affidavits, they are quite commonly heard on oral representations by counsel, and matters germane to court's ruling range all the way from the health of witnesses to the true significance of religious holidays. West's Ann.Pen.Code, § 1050; West's Ann.Code Civ.Proc. § 595.4.	Does law require motions for continuance to be made upon affirmative proof in open court?	031466.docx	LEGALASE-00137043-LEGALASE-00137044	Condensed, SA, Sub	0.64	0	1	1	1	1

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837	People v. Alvin, 71 N.Y.2d 233	63+111	Before a public servant may be convicted of bribe receiving, second degree, there must be proof of a corrupt agreement. The People must establish that defendant solicited, accepted or agreed to accept a benefit "upon an agreement or understanding" that his conduct would be influenced by the benefit (Penal Law former "200.10; see also, People v. Charles, 61 N.Y.2d 321, 473 N.Y.S.2d 941, 462 N.E.2d 118). Thus, it was not enough for the People to prove defendant issued a false certificate to Falto and that he received \$100 from him. The essence of the crime was not the issuing of the license or the receipt of the money; it was the doing of one in exchange for the other. Thus, defendant's mental state was not the intent to issue a license to Falto, but the intent to receive money at the time he issued the license that he was doing so in exchange for a bribe that the later took the money knowing it was paid for that purpose. The point is illustrated by comparing bribe receiving, which involves accepting a reward in exchange for performing an official act, with the lesser offense of receiving a reward for official misconduct (Penal Law "200.25) which involves accepting a reward for past official misconduct. Reward receiving is criminal although the misconduct occurs without any understanding that it will be rewarded later. Thus, unless the People provided a corrupt bargain existed at the time defendant issued the false certificate to Falto, he could be guilty at most of receiving a reward in violation of section 200.25. Moreover, even if the jury believed Falto, it might, in the absence of proof of defendant's mental state when he issued the license, find him guilty of the lesser offense of receiving a reward. Thus, evidence showing that defendant had issued false documents for Falto in the past helped to prove that the two men made their bargain when Falto first approached defendant and asked, "Charlie, can I get this license?"	Before a public servant may be convicted of bribe receiving in the second degree, there must be proof of a corrupt agreement, and State must establish that defendant solicited, accepted or agreed to accept a benefit upon an agreement or understanding that his conduct would be influenced by that benefit. McKinney's Penal Law § 200.10 (now § 200.11).	Bribery - Memo #529 - C 00352-00303646-R055-003303648	00352-00303646-R055-003303648	SA, Sub	0.87	839	15,344	1	1	21,876	9,029
	Read v. Harvey, 147 Rabho 364	307A+485	I.R.C.P. 27(c) states in relevant part that if a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order only if it finds that "the party failing to admit had reasonable ground to believe that the party might prevail on the matter. ..."	Rule that party requesting admissions may apply to court for order requiring the other party to pay reasonable expenses incurred in making that proof, including reasonable attorney fees, is mandatory unless exception applies, and whether the exception applies is committed to the sound discretion of the district court. Rules Civ.Proc., Rule 37(c).	000151.docx	LEGALASE-00137290-LEGALASE-00137291	Condensed, SA	0.44	0	1	0	1	1	
838	Raulerson v. Finney, 280 So. 2d 484	307A+331	In the case at bar, it is apparent that the trial court has taken a "short cut" in order to expedite the progress of the cause. While there can be no quarrel with the court's purpose, we must hold that the procedure is not permissible. While the cited rules of civil procedure provide for a request and an opportunity to respond, the rules obviously do not call for the unqualified production of every statement without regard for need, and they contain provisions for protection against the production of documents or portions thereof which contain "the mental impressions, conclusions, opinions or legal theories of an attorney or other representative of a party concerning the litigation". The purpose of the rules will be best accomplished by following the prescribed procedure. We do not imply that the procedure cannot be varied by agreement or where the peculiar facts of a case require a change in procedure. However, as the trial court has done in this case, the court cannot vary the rules and protections set forth in the rules, then the rules must be followed. Accordingly, the petition for writ of certiorari is granted and the order directing the parties "to produce any and all witness statements" is quashed. Of course, our action is without prejudice to the respondent to further proceed under the rules.	While rules relating to discovery provide for request and opportunity to respond, they obviously do not call for unqualified production of every statement without regard to need, and purpose of rule may be best accomplished by following prescribed procedure. 30 F.S.A. Rules of Civil Procedure, rules 1.280, 1.350(a, b).	030313.docx	LEGALASE-00137481-LEGALASE-00137482	Condensed, SA, Sub	0.76	0	1	1	1	1	1
839	Estate of Despain v. Azzurri Gr., 900 So. 2d 637	115+151	"768.72(1). Fla. Stat. (1999) (emphasis added)4 see also Fla. R. Civ. P. 1.150. Because the amount of an award may be a pittance to a rich man and ruination to a poor one, the goal of punishment must of necessity take into account the financial worth of the wrongdoer. Accordingly, although section 768.72(1) is procedural in nature, it also provides a substantive right to parties not to be subjected to a punitive damage claim and attendant discovery of financial worth until the requisite showing under section 768.72(1) is made to the trial court. See, e.g., Wells v. Wells, 671 So. 2d 134, 660 (Fla.1996); Grebe Newspaper Co. v. King, 658 So. 2d 518 (Fla.1995).	Although the punitive damages pleading statute is procedural in nature, it also provides a substantive right to parties not to be subjected to a punitive damages claim and attendant discovery of financial worth until the requisite showing under the statute has been made to the trial court. F.S.1999.5 768.72.	031248.docx	LEGALASE-00137201-LEGALASE-00137202	SA, Sub	0.58	0	0	1	1	1	
840														

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences	
841	City of Ashland v. Ashland Savings, 271 Neb. 362	307A+486	We have held that a party's failure to make a timely and appropriate response to a request for admission constitutes an admission of the subject matter of the request, which matter is conclusively established unless, on motion, the court permits withdrawal of the admission. Discovery Rule 36. [2000]. Wibbelis v. Unick, 229 Neb. 184, 426 N.W.2d 244 (1988). We have recognized that rule 36 is self-enforcing, without the necessity of judicial action to effect an admission which results from a party's failure to answer or object to a request for admission. Id.; Mason State Bank v. Sekutera, 238 Neb. 361, 461 N.W.2d 517 (1990). We have noted, however, that rule 36 is not self-executing. Thus, a party that seeks to claim another party's admission, as a result of that party's failure to respond properly to a request for admission, must prove service of the request for admission and the served party's failure to answer or object to the request and must also offer the request for admission as evidence. Schwarz v. Platte Valley Exterminating, supra; Wibbelis v. Unick, supra. If the necessary foundational requirements are met and no motion is sustained to withdraw an admission, a trial court is obligated to give effect to the provisions of rule 36. Schwarz v. Platte Valley Exterminating, supra. The city followed the indicated procedures in this case.	A party's failure to make a timely and appropriate response to a request for admission constitutes an admission of the subject matter of the request, which matter is conclusively established unless, on motion, the court permits withdrawal of the admission. Discovery Rule 36.	"Does a party's failure to make a timely and appropriate response to a request for admission constitute an admission of the subject matter of the request, which matter is conclusively established unless, on motion, the court permits withdrawal of the admission?"	Perital Procedure - Memo #4705 - C- AP.doc	ROSS-00332181-ROSS-00332182	SA, Sub	0.8	839	0	15,344	14,873	21,876	9,029
						031411.docx	LEGALASE-00137672-LEGALASE-00137673	SA, Sub	0.65	0	0	1	1	1	
842		307A+122	We agree with this contention by Patton Boggs. If a petitioner requests a deposition to investigate a potential claim under rule 202.1(b), the trial court must find that the likely benefit of allowing the petitioner to take the requested deposition to investigate a potential claim outweighs the burden or expense of the procedure. If the trial court finds that the likely benefit of allowing the petitioner to take the requested deposition to investigate a potential claim outweighs the burden or expense of the procedure, the trial court is required to allow the deposition. See, e.g., Vernon's Ann. Texas Rules Civ. Proc., Rules 202.1(b), 202.4b(1), 2. We agree with this contention by Patton Boggs. If a petitioner requests a deposition to investigate a potential claim under rule 202.1(b), the trial court must find that the likely benefit of allowing the petitioner to take the requested deposition to investigate a potential claim outweighs the burden or expense of the procedure. If the trial court finds that the likely benefit of allowing the petitioner to take the requested deposition to investigate a potential claim outweighs the burden or expense of the procedure, the trial court is required to allow the deposition. See, e.g., Vernon's Ann. Texas Rules Civ. Proc., Rules 202.1(b), 202.4b(1), 2.	If a petitioner requests a pre-suit deposition to investigate a potential claim, the trial court must find that the likely benefit of allowing the petitioner to take the requested deposition to investigate a potential claim outweighs the burden or expense of the procedure. If the trial court finds that the likely benefit of allowing the petitioner to take the requested deposition to investigate a potential claim outweighs the burden or expense of the procedure, the trial court is required to allow the deposition. See, e.g., Vernon's Ann. Texas Rules Civ. Proc., Rules 202.1(b), 202.4b(1), 2.	"When the petitioner requests a deposition to investigate a potential claim, should the trial court find that the likely benefit of allowing the petitioner to take the requested deposition to investigate a potential claim outweighs the burden or expense of the procedure?"										
843	Wagner v. Carow Investigations & Sec., Inc., 93 Nev. 627	307A+483	The sanction for failure to serve timely answers or objections to requests for admissions is that all matters in the request are deemed admitted. N.R.C.P. 36(d), supra. It is settled in this jurisdiction that such admissions may properly serve as the basis for summary judgment against the party who has failed to serve a timely response. Graham v. Carson-Shoe Hosp., 91 Nev. 609, 540 P.2d 105 (1975). Relief is granted where the party has shown that the admission is manifestly unjust. Mercurio v. Western Mercury, Inc. v. Rix Co., 84 Nev. 218, 272, 488 P.2d 792, 794 (1968).	Matters deemed admitted as result of failure to serve timely answers or objections to requests for admissions may properly serve as basis for summary judgment against party who has failed to serve timely response and relief from motion to vacate summary judgment is discretionary with district court. NKCP 36(p, b).	Can the matters deemed admitted as a result of failure to serve timely answers or objections to requests for admissions properly serve as a basis for a summary judgment against a party who has failed to serve timely response and relief?	Perital Procedure - Memo #4735 - C- AP.docx	ROSS-003291111-ROSS-003291112	Condensed SA	0.41	0	1	0	1	1	
844	Ferraro v. Zurich, 12 N.J. Super. 231	413+771	Petitioner's own testimony unquestionably stands as substantially impeached and, to the extent his medical witnesses based their opinions on his exaggerated subjective symptoms, those opinions, of course, cannot be unqualifiedly accepted. The Compensation Act, however, "provides social insurance in the common interest as well as the interest of the workman." Nigley v. Ford Motor Co., supra, and does not sanction punishment of exaggeration or indeed misrepresentation by denial of proper compensation for a disability otherwise sustained by the proofs.	The compensation act provides social insurance in common interest as well as interest of workmen, and does not sanction punishment of exaggeration or misrepresentation by denial of proper compensations for disability otherwise sustained by proofs.	"Does the compensation act provide social insurance in common interest as well as the interest of workmen, and does it sanction punishment of exaggeration or misrepresentation by denial of proper compensations for disability otherwise sustained by proofs?"	047926.docx	LEGALASE-00137235-LEGALASE-00137237	Condensed SA, Sub	0.55	0	1	1	1	1	
845	Trachtenberg v. Failedmesiah.com, 43 F. Supp. 3d 198	307A+316.1	Finally, plaintiff's request for limited discovery jurisdictional discovery under C.P.L.R. § 3211(d) is unwarranted. If a plaintiff makes a "sufficient start" toward meeting her jurisdictional burden, a district court has discretion to grant her limited jurisdictional discovery "to prove other contacts and activities of the defendant in New York as might constitute a substantial part of the claim." N.Y. Civ. Prac. L. & R. § 3211(d). N.E. 2d 513, 515, 354 N.Y.2d 905, 908 (1974). For instance, one recent decision allowed such discovery when defendant conceded that he had physically conducted research in New York, as it was necessary to determine whether the extent of the research exceeded the minimum threshold established in SPCA. See Brov. Nast, 11 Civ. 4442, 2012 WL 3262770, at *5 (S.D.N.Y. Aug. 10, 2012). Here, however, plaintiff has a problem of kind, not degree: she needs new jurisdictional theories, not more evidence substantiating the theories she has already advanced. Even the best evidence she could get in further discovery is insufficient from defendant admitting he intended his article to be read by the New York Orthodox Jewish community, relied on a New York source, used Webforms, and had an ongoing contractual relationship with KelleyMedia) would make no difference in the jurisdictional outcome for the reasons already discussed.	If a plaintiff makes a sufficient start toward meeting her jurisdictional burden, a court has discretion to grant her limited jurisdictional discovery to prove other contacts and activities of the defendant in New York as might constitute a substantial part of the claim. N.Y. McKinney's CPLR § 3211(d).	"If a plaintiff makes a sufficient start toward meeting her jurisdictional burden, does a court have discretion to grant her limited jurisdictional discovery to prove other contacts?"	Perital Procedure - Memo #4507 - C- DHA.docx	ROSS-003291058-ROSS-003291060	SA, Sub	0.8	0	0	1	1	1	

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846	Lowell v. Am. Honda Motor Co., 694 S.W.2d 937	307A+36.1	The decision whether or not to issue a protective order lies within the sound discretion of the trial court, and its decision will not be reversed absent an abuse of discretion. <i>Centurion Industries, Inc. v. Warren Steurer and Associates</i> , 665 F.2d 323, 326 (10th Cir.1981). Trade secrets and other confidential commercial information enjoy no privilege from disclosure, although courts may choose to protect such information for good cause shown. <i>United States v. International Business Machines Corp.</i> , 67 F.R.D. 40, 42 n. 1 (S.D.N.Y.1975). To show good cause under Rule 26 (c), the moving party must demonstrate specific examples of harm and not mere conclusory allegations. 8 Wright & Miller, Federal Practice and Procedure 2035, p. 265 (1970) When confidential commercial information is involved, this standard requires a showing that disclosure will result in a clearly defined and very serious injury to the company business. <i>United States v. Exxon Corp.</i> , 94 F.R.D. 251, (D.C.1981), or, stated differently, great competitive disadvantage and irreparable harm. <i>Essex Wire Corp. v. Eastern Electric Sales Co.</i> , 48 F.R.D. 308, 310 (E.D.Pa.1969).	Showing good cause to protect confidential commercial information from discovery requires showing that disclosure would result in a clearly defined and very serious injury to the disclosing company's business or great competitive disadvantage and irreparable harm. Rules Civ.Proc., Rule 26.03; Fed.Rules Civ.Proc.Rule 26(c); 28 U.S.C.A.	Does showing of good cause to protect confidential commercial information requires a showing that disclosure will result in a clearly defined and very serious injury to the company business?	031625.docx	LEGALASE-00138397-LEGALASE-00138398	SA, Sub	0.71	839	0	15,344	14,873	21,876	1	9,029
847	Randall Elec. v. State, 150 A.2d 875	307A+36.1	1. We affirm. Initially, we note that the Court of Claims has broad discretion in supervising discovery in order to prevent harassment and abuse (see, <i>Stambosky v. Reiner</i> , 145 A.D.2d 309, 534 N.Y.S.2d 977; see also, <i>Watts v. Peckskill Bldg.</i> , 147 A.D.2d 838, 537 N.Y.S.2d 935), and our inquiry is limited to whether the Court of Claims abused its discretion (see, <i>Hirschfeld v. Hirschfeld</i> , 69 N.Y.2d 842, 844, 534 N.Y.S.2d 704, 507 N.E.2d 297; <i>Stambosky v. Reiner</i> , supra). In our view, the Court of Claims' burden of establishing that the material was withheld from disclosure (see, <i>Koump v. Smith</i> , 25 N.Y.2d 287, 294, 303 N.Y.S.2d 858, 250 N.E.2d 857). As was stated in <i>Crow/Crimmins Wolff & Munier v. County of Westchester</i> , 126 A.D.2d 696, 697, 511 N.Y.S.2d 117-Admissions of fact explicitly or implicitly made "without prejudice" during settlement negotiations are protected from discovery pursuant to the public policy of encouraging and facilitating settlement (see, <i>White v. Old Dominion S.S. Co.</i> , 102 N.Y. 681, 682, 9 N.E. 289). Actions taken and observations made for the purpose of settling a lawsuit are not subject to discovery and are expressly not for litigation, which actions would not have been accomplished except in a mutual attempt to reach a settlement, should likewise generally be protected by the same public policy of encouraging attempts at settlement.	Actions taken and observations made for stated purpose of arriving at settlement agreement, and expressly not for litigation, which actions would not have been accomplished except in mutual attempt to reach settlement, should generally be protected from discovery by public policy encouraging attempts at settlement.	Are actions taken in observations made for stated purpose of arriving at a settlement agreement subject to discovery when actions would not have been accomplished except in a neutral attempt to reach a settlement?	Perital Procedure - Memo # 5081 - C - ES.docx	RDS-00317872-RD55-00317873	Condemned, SA	0.78	0	1	0	1	1	1	
848	Kemper Mfg. Co. v. Superior Court in & For Los Angeles City, 141 Cal. App. 2d 547	307A+403	In order that a party to an action may, pursuant to section 1000, Code of Civil Procedure, have the right to inspect books of account or documents, he must (1) show that the person against whom the order is sought has the writings to be inspected in his possession or under his control; (2) identify the writings desired; and (3) clearly show that they contain competent and admissible evidence which is material to the issues to be tried. <i>West's Ann. Code Civ.Proc.</i> § 1000.	In order that a party to an action may, pursuant to Code of Civil Procedure, have the right to inspect books of account or documents, he must (1) show that person against whom the order is sought has the writings to be inspected in his possession or under his control; (2) identify the writings desired; and (3) clearly show that they contain competent and admissible evidence which is material to the issues to be tried. <i>West's Ann. Code Civ.Proc.</i> § 1000.	"In order to be entitled for an inspection of documents, a should be shown that they are in the possession of the adverse party?"	027288.docx	LEGALASE-00139233-LEGALASE-00139234	Condemned, SA, Sub 0.15	0	1	1	1	1	1	1	
849	Moseley v. Behringer, 184 S.W.3d 829	307A+508	The granting of a nonsuit is a ministerial act; plaintiff's right thereto exists from the moment a written motion is filed or an oral motion is made in open court unless defendant has, prior to that time, filed pleadings seeking affirmative relief, and, thus, trial court has no discretion but to grant the nonsuit unless defendant has previously sought affirmative relief. <i>Vernon's Ann. Texas Rules Civ.Proc.</i> , Rule 162.	Does a plaintiff's right to dismiss the suit exist from the moment a written motion is filed or an oral motion is made in open court?	Does a plaintiff's right to dismiss the suit exist from the moment a written motion is filed or an oral motion is made in open court?	Perital Procedure - Memo # 5213 - C - NC.docx	LEGALASE-00029087-LEGALASE-00029088	Condemned, SA, Sub 0.54	0	1	1	1	1	1	1	
850	Fitch Against Brownburg Amended v. Town of Brownburg, 32 N.E.3d 798	307A+554	The standard of appellate review for Trial Rule 12(B)(1) motions to dismiss is de novo. <i>See</i> <i>Magness</i> , 744 N.E.2d 397, 401 (Ind.2001). If the facts before the trial court are not in dispute, then the question of subject matter jurisdiction is purely one of law. <i>Id.</i> Under those circumstances no deference is afforded the trial court's conclusion because appellate courts independently, and without the slightest deference to trial court determinations, evaluate those issues they deem to be questions of law. <i>Id.</i> <i>Quoting</i> <i>Bader v. Johnson</i> , 732 N.E.2d 1212, 1216 (Ind.2000). Thus, we review de novo a trial court's ruling on a motion to dismiss under Trial Rule 12(B)(1) where, as here, the facts before the trial court are undisputed <i>Id.</i> As a general proposition, the party challenging subject matter jurisdiction carries the burden of establishing that jurisdiction does not exist. <i>Id.</i> , at 401.	If facts before trial court on motion to dismiss for lack of subject matter jurisdiction are not in dispute, then question of subject matter jurisdiction is purely one of law; under those circumstances, no deference is afforded the trial court's conclusion because appellate courts independently, and without the slightest deference to trial court determinations, evaluate those issues they deem to be questions of law. Trial Procedure Rule 12B(1).	"If facts before trial court on motion to dismiss for lack of subject matter jurisdiction are not in dispute, then is the question of subject matter jurisdiction purely one of law?"	Perital Procedure - Memo # 5605 - C - BP.docx	LEGALASE-00029464-LEGALASE-00029465	SA, Sub	0.53	0	0	0	1	1	1	
851	Lewis v. Chik6, 320 Conn. 706	307A+554	If the trial court decides the motion "on the basis of the complaint alone, it must consider the allegations of the complaint in the light of the facts and circumstances pleaded in the complaint. Including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader. <i>Practice Book</i> 1998, § 10-31(a)(1).	If the trial court decides the motion to dismiss for lack of subject matter jurisdiction on the basis of the complaint alone, it must consider the allegations of the complaint in their most favorable light; a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader. <i>Practice Book</i> 1998, § 10-31(a)(1).	"If the trial court decides the motion to dismiss for lack of subject matter jurisdiction on the basis of the complaint alone, it must consider the allegations of the complaint in their most favorable light; a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader."	032799.docx	LEGALASE-00139483-LEGALASE-00139484	Condemned, SA, Sub 0.15	0	1	1	1	1	1	1	

Appendix D

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Between Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
859	Stats v. McKinnon, 206 S.W.3d 532	307A-554	The process used to consider a "facial" challenge to a court's subject jurisdiction is similar to the process used to determine whether a motion to dismiss for lack of subject jurisdiction should be granted. See, e.g., <i>Arrell v. Herron</i> , 991 F.Supp. 725, 725 (E.D. Pa. 1997). A facial challenge makes war on the complaint itself. It asserts that the complaint, considered from top to bottom, fails to allege facts that show that the court has power to hear the case. See, e.g., <i>Crawford v. United States Dep't of Justice</i> , 123 F.Supp.2d 1022, 1033*14 (S.D. Miss. 2000). In deciding a facial challenge, the court considers the impugned pleading and nothing else. <i>Lariv. v. United States Dep't of Justice</i> , 2000 WL 1000000 (S.D. Miss. 2000). <i>IC Explosives USA, Inc.</i> , 817 F.Supp. 1028, 1028 (D. Conn. 1993). If a complaint attacked on its face competently alleges any facts which, if true, would establish grounds for subject matter jurisdiction, the court must unconditionally accept those facts, end its inquiry, and deny the dismissal motion. <i>Great Lakes Educ. Consultants v. Fed. Emergency Mgmt. Agency</i> , 582 F.Supp. 193, 194 (D. Mich. 1984).	It is a complaint attacked on its face competently alleges any facts which, if true, would establish grounds for subject matter jurisdiction, the court must unconditionally accept those facts, end its inquiry, and deny the dismissal motion.	"When a complaint challenged on subject matter jurisdiction, on its face, competently alleges any facts which, if true, would establish grounds for subject matter jurisdiction, the court must unconditionally accept those facts?"	033408.docx	LEGALASE-00141372-LEGALASE-00141378	Condensed, SA	0.8	839	1	15,344	21,876	9,079
	Estate of Rose, 465 Pa. 53	220A-1003	The federal and state governments may generally tax the same subject matter at the same time and neither the United States nor the state, in determining the amount of tax due to it, is under constitutional obligation to make any allowance on account of the tax of the other. <i>Frick v. Pennsylvania</i> , 288 U.S. 473, 499, 500, 45 S.Ct. 603, 69 L.Ed. 1058 (1935). <i>Affirming in part</i> . <i>Frick Estate</i> , 277 Pa. 242, 121 A. 35 (1923).	Can federal and state governments generally tax same subject matter at same time and neither the United States nor the state, in determining amount of tax due it, is under constitutional obligation to make any allowance on account of tax of the other?	"Can federal and state governments generally tax same subject matter at same time and neither the United States nor the state, in determining amount of tax due it, is under constitutional obligation to make any allowance on account of tax of the other?"	045511.docx	LEGALASE-00141777-LEGALASE-00141778	Condensed, SA	0.4	0	1	0	1	1
861	Kocum v. United States, 225 F.2d 220	60A-113	However, the statute refers to the "decision or action" of the Government employee, and is applicable to a situation where the advice and recommendation of the Government employee involved would be influential in securing the decision desired by the persons offering the bribe, even though the employee did not have the authority to make the final decision. <i>Rembrandt v. United States</i> , 6 Cr., 281 F. 122; <i>Brown v. United States</i> , 6 Cr., 290 F. 879; <i>Cohen v. United States</i> , 6 Cr., 294 F. 488; <i>Hurley v. United States</i> , 4 Cr., 32, 242, 297. The evidence was sufficient to establish that the Government employee involved in the transaction favorable to applicants in the disposal of surplus property at the Oak Ridge plant, and that the applicants intended to influence his "action" in disposing of such property.	Under statute prohibiting the offering of any money to any employee of United States with intent to influence his decision on any matter pending before him in official capacity, the crew of defense is intent to influence an official decision of person acting for government where advice and recommendation of government official involved would be influential in securing decision desired by person offering bribe, even though official did not have authority to make the final decision. 18 U.S.C.A. § 201.	Is the bribery statute applicable to a situation where advice and recommendation of government official involved would be influential in securing decision desired by person offering bribe?	033777.docx	LEGALASE-00142409-LEGALASE-00142410	Condensed, SA, Sub	0.3	0	1	1	1	1
	Owens v. Thorne, 753 So. 2d 1117	307A-723.1	When a Rule 56(f) continuance is requested, the trial court, "if it finds the reasons offered to be sufficient," has the discretion to "postpone" the trial. The court has the discretion to grant a continuance for any other thing that discovery can be completed. "Precisely, supra. This court has noted on several occasions that "[t]he rule itself contemplates that the completion of discovery is, in some instances, desirable before the court can determine whether there is a genuine issue of material fact." <i>Man v. Truck Renting & Leasing Ass'n, Inc.</i> , 520 So.2d 1333, 1343 (Miss.1987). (<i>Truck Smith v. H.C. Bailey Co.</i> , 477 So.2d 224, 232 (Miss.1985)). "Justice is served," the court stated in <i>Cunningham v. Lanier</i> , 555 So.2d 685, 686 (Miss.1989), "when a fair opportunity to appraise a motion is afforded." <i>Id.</i> The court stated in <i>Id.</i> that the trial court's judgment requires a careful review by the trial court of all pertinent evidence in a light most favorable to the nonmovant." (emphasis in original).	When continuance is requested to permit discovery in support of opposition to motion for summary judgment, the trial court, if it finds the reasons offered to be sufficient, has the discretion to postpone the trial. The court has the discretion to grant a continuance for any other thing that discovery can be completed. Rules Civ.Proc., Rule 56(f).	"Does the trial court, if it finds the reasons offered to be sufficient, have the discretion to postpone consideration of the motion for summary judgment and order among other things that discovery be completed?"	Prtrial Procedure - Memo # 4249 - C - No.docx	ROSS-00291230-ROSS-00291231	Condensed, SA	0.66	0	1	0	1	1
863	Nichols v. Muakungum Coll., 318 F.3d 674	170A-1835	When a defendant moves to dismiss on grounds of lack of subject matter jurisdiction, "the plaintiff has the burden of proving jurisdiction in order to survive the motion." <i>Boon v. Greater Cleveland Transit Auth.</i> , 659 F.3d 1000, 1000 (6th Cir. 2011). The court stated in <i>Id.</i> that the court may consider evidence outside the pleadings to resolve factual disputes concerning jurisdiction, and both parties are free to supplement the record by affidavits. <i>Rogers v. Stratton Industries</i> , 798 F.2d 913, 916 (6th Cir. 1986). However, where a defendant argues that the plaintiff has not alleged sufficient facts in her complaint to create subject matter jurisdiction, the trial court takes the allegations in the complaint as true. <i>Id.</i> , 795 F.3d at 1431.	In reviewing a motion to dismiss for lack of subject matter jurisdiction, the court may consider evidence outside the pleadings to resolve factual disputes concerning jurisdiction, and both parties are free to supplement the record by affidavits. The trial court takes the allegations in the complaint as true. Fed.Rules Civ.Proc.Rule 12(b)(1), 28 U.S.C.A.	May a court consider evidence outside the pleadings in resolving a motion to dismiss for lack of subject matter jurisdiction?	033426.docx	LEGALASE-00142754-LEGALASE-00142755	SA, Sub	0.34	0	0	1	1	1
	Palmer v. Hoffman, 745 N.W.2d 745	307A-560	Rule 13.02 (5) "requires service within ninety days and requires the plaintiff to take affirmative action to obtain an extension or directions from the court if service cannot be accomplished." <i>Meier v. Semcaut</i> , 641 N.W.2d 532, 543 (Iowa 2000) (emphasis added). When there is no service within ninety days and no order extending the time for service, the delay is presumptively abusive. <i>Id.</i> at 542. Once a determination of good cause has been accepted or rejected, the district court has no discretion and is required to either extend the time for service or dismiss the complaint. This court is whether substantial evidence supports the district court's conclusion that Palmer demonstrated good cause for the delay in service. <i>Id.</i>	Once a determination of good cause has been accepted or rejected for the failure of a plaintiff to serve within 90 days the party against whom the action has been filed, the district court has no discretion and is required to either extend the time for service for an appropriate period or dismiss the action without prejudice. I.C.A. Rule 13.02(5).	Does the district court have no discretion to either extend the time for service for an appropriate period or dismiss the action without prejudice once a determination of good cause has been accepted or rejected?	033734.docx	LEGALASE-00143342-LEGALASE-00143343	Condensed, SA, Sub	0.57	0	1	1	1	1
864	Old Home Enter. v. Fleming, 20 Neb. App. 705	307A-493.1	When a lawsuit is dismissed by operation of law for lack of service of process within a month of filing, the trial court has no jurisdiction to reinstate the lawsuit, to set aside the dismissal, to grant a new trial, and if made, they are a nullity, as are subsequent pleadings. <i>West's Neb.Rev. S. 5-25-217.</i>	When a lawsuit is dismissed by operation of law for lack of service of process within a month of filing, the trial court has no jurisdiction to reinstate the lawsuit, to set aside the dismissal, to grant a new trial, and if made, they are a nullity, as are subsequent pleadings. West's Neb.Rev. S. 5-25-217.	Does a trial court have jurisdiction to make orders, when a lawsuit is dismissed by operation of law for lack of service of process within a month of filing?	Prtrial Procedure - Memo # 6382 - C - PA.docx	ROSS-00289672	SA, Sub	0.07	0	0	1	1	1

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ROW	Judicial Opinion	WVNS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences	
872	Shaw v. Universal Life & Acc. Ins. Co., 123 S.W.2d 738	307A-633	In this case, the trial court had the right to direct a replacer in order to make the trial proceedings conform substantially to the rulings of the court (Texas Rules of Courts, Rule 29, for District and County Courts), and having the right to make the order, it had the inherent power possessed by all courts to enforce a compliance therewith. In 49 C.J. §6, 740, section 1037, it is said: "Where an order has been properly granted to make a pleading more definite and certain or more specific, failure or refusal to comply therewith is an act of contempt, and the action may, and should, be dismissed without prejudice, at least in the absence of reasonable and proper excuse." In such matters, the action of the court is based on the exercise of discretion, reviewable only on abuse of power. In this case, we think it was the duty of appellant's attorney to comply with the order and ruling of the trial court, and, if aggrieved, to have taken exception to the action of the court, and preserved the point by proper bills of exception, thus waiving nothing by a courteous compliance with its orders. The record reveals that appellant's attorney failed to do so, and that the trial court was justified in summarily dismissing the action for failure to comply with the order, and summarily for acts of her attorney in refusing to plead and not justify a dismissal of her cause of action when punishment personal to the attorney was available, especially so, when her pleadings were good as against general demurrer.	Where an order has been properly granted to make a pleading more definite or more specific, failure to comply therewith is an act of contempt and action may be dismissed without prejudice, at least in absence of proper excuse.	When proceeding under Code of Civil Procedure section allowing summary judgment, a party's failure to comply with a court's order to file a pleading, or a party's failure to file a pleading, is a matter avoiding the legal effect of or defeating the claim. All pleadings and supporting documents must be interpreted in the light most favorable to the nonmoving party. S.H.A. 735 ILCS 5/2-619.	104807.docx	LEGALCASE-00146765-LEGALCASE-00146770	Condensed, SA	0.85	0	1	0	1	21,276	9,029
873	Schroeder v. RGS, 2013 IL App 131121463	307A-633	We note initially that defendant filed its motion pursuant to action 275 ILCS 5/2-619 (West 2010). Due to our ultimate conclusion in this case, we need not address defendant's argument, brought pursuant to action 275 ILCS 5/2-619 (West 2010), that plaintiff failed to state a claim upon which relief can be granted. A motion to dismiss brought pursuant to section 275 ILCS 5/2-619 (West 2010) of the Code allows for the involuntary dismissal of a complaint when the "claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(9) (West 2010). When a party moves for summary judgment, the court is to consider the pleadings and supporting documents submitted in support of the complaint as admitted. Doe A. v. Diocese of Dallas, 284 Ill.2d 393, 396, 334 Ill. Dec. 649, 917 N.E.2d 475 (2009). All pleadings and supporting documents must be interpreted in the light most favorable to the nonmoving party. Porter v. Decatur Memorial Hospital, 227 Ill.2d 343, 352, 317 Ill. Dec. 703, 882 N.E.2d 583 (2008). "Once a defendant satisfies the initial burden of presenting affirmative matter, the burden then shifts to the plaintiff to establish that the defense is "unfounded or requires the resolution of an essential element of material fact before it is proven." (Holt v. City of Chicago, 2013 IL 119033, ¶10 (2013)). See also, Doe A. v. Diocese of Dallas, 284 Ill.2d 393, 396, 334 Ill. Dec. 649, 917 N.E.2d 475 (2009). We review the circuit court's determination of a section 275 motion to dismiss using the de novo standard of review. Caraboki v. Lata, 227 Ill.2d 364, 369, 317 Ill. Dec. 656, 882 N.E.2d 534 (2008).	When proceeding under Code of Civil Procedure section allowing summary judgment, a party's failure to comply with a court's order to file a pleading, or a party's failure to file a pleading, is a matter avoiding the legal effect of or defeating the claim. All pleadings and supporting documents must be interpreted in the light most favorable to the nonmoving party. S.H.A. 735 ILCS 5/2-619.	Will all pleadings and supporting documents be interpreted in the light most favorable to the nonmoving party when a motion to dismiss or summary judgment is granted? Will all pleadings and supporting documents be interpreted in the light most favorable to the nonmoving party when a motion to dismiss or summary judgment is granted?	11132.docx	LEGALCASE-00084073-LEGALCASE-00084074	Condensed, SA, Sub	0.81	0	1	1	1	1	1
874	Stacy v. Johnson, 25 So. 3d 365	307A-633	"[I]n reviewing a trial court's decision to dismiss under [Rule 41(b)], this Court may reverse only if it finds that the trial court abused its discretion." Wallace v. Jones, 572 So.2d 371, 375 (Miss. 1990). "Mississippi does not set a time limit for the prosecution of an action once it has been filed." Henshaw v. Holly, 973 So.2d 716, 720 (8) (Miss. App. 2007). However, "[t]he trial court has the power to dismiss for failure to prosecute as a means necessary to the orderly expedition of justice and the court's control of its own docket." Id. at 719 (5). Such cases are distinguished from those involving summary judgment, where the court is to consider the pleadings and supporting documents submitted in support of the complaint as admitted, and where lesser sanctions would not serve the best interests of justice." Id. at 720 (8).	Cases are dismissed with prejudice for failure to prosecute, if the record shows that a plaintiff has been guilty of dilatory or contumacious conduct, or has repeatedly disregarded the procedural directives of the court, and where lesser sanctions would not serve the best interests of justice. Rules Civ. Proc., Rule 41(b).	"Are cases dismissed with prejudice for failure to prosecute, if the record shows that a plaintiff has repeatedly disregarded the procedural directives of the court?"	036410.docx	LEGALCASE-00148995-LEGALCASE-00148996	SA, Sub	0.62	0	0	1	1	1	1
875	Am. Truck Driving Acad. v. Smith, 998 So. 2d 1067	30-3206	"[I]t is clear from the record that the judgment is, in actuality, a judgment of dismissal, with prejudice, entered pursuant to Rule 41(b), Ala. R. Civ. P. on the plaintiff's own motion. See Burdshaw v. White, 385 So.2d 842, 843 (Ala. 1980). The trial court's decision to dismiss the action with prejudice is an action for a final judgment." However, as Burdshaw also notes, "[t]he entry of a judgment for a defendant as a matter of law for want of prosecution is a drastic sanction," and because dismissal "is such a drastic sanction, it is to be used only in extreme situations"; thus, an appellate court "carefully scrutinizes any order terminating an action for want of prosecution, and it does not hesitate to set one aside when an abuse of discretion is found." Id. With particular references to a judgment of dismissal with prejudice for lack of due diligence, the court states that "the trial court's decision to dismiss only where there is a clear record of delay or contumacious conduct by the plaintiff or a serious showing of willful default." Burton v. Allen, 628 So.2d 814, 815 (Ala. Civ. App. 1993)."	An appellate court carefully scrutinizes any order terminating an action for want of prosecution, and it does not hesitate to set one aside when an abuse of discretion is found, since dismissal is such a drastic sanction, and it is to be used only in extreme situations. Rules Civ. Proc., Rule 41(b).	"Does a court carefully scrutinize any order terminating an action for want of prosecution, and does it hesitate to set one aside when an abuse of discretion is found?"	Prelim Procedure - Memo # 7991 - C-35,3650.docx	ROOS-00329794-KOOS-00329795	Condensed, SA	0.73	0	1	0	1	1	1

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences	
876	Tolmasova v. Umorow, 23 A.L.J.3d 570	307A-554.1	CLR 32.6 is "extremely forgiving" (Blackowski v. Collins Contr. Co., 89 N.Y.2d 493, 505 N.Y.S.2d 848, 678 N.E.2d 460) in that it "tenderly" disposes of the plaintiff's "unreasonable neglect to proceed" (Davis v. Goodsell, 6 A.D.3d 382, 383, 774 N.Y.S.2d 568; see CLR 32.6 [a], [e], [f]; Di Simone v. Good Samaritan Hosp., 100 N.Y.2d 632, 633, 768 N.Y.S.2d 735, 800 N.E.2d 102; Blackwood v. Collins Contr. Co., supra at 504-505, 655 N.Y.S.2d 848, 678 N.E.2d 460). "While the statute prohibits the Supreme Court from dismissing an action based on neglect to proceed whenever the plaintiff has shown a justifiable excuse for his or her delay, and a justifiable excuse for his or her delay is shown, the Court may dismiss an action based on neglect to proceed whenever necessary in order for the plaintiff to escape such a dismissal." (Davis v. Goodsell, supra at 383-384, 774 N.Y.S.2d 568). For example, a plaintiff's failure to comply with a valid 90 day notice under CPLR 32.6(b)(3) "should, in the proper exercise of discretion, be excused under a variety of circumstances, including where a defendant... has obstructed the plaintiff's own efforts to obtain legitimate pretrial disclosure from the defendant." (Davis v. Goodsell, supra at 384, 774 N.Y.S.2d 568).	Statute authorizing the Supreme Court to dismiss a plaintiff's action based on the plaintiff's unreasonable neglect to proceed never requires such dismissal; while the statute prohibits the Supreme Court from dismissing an action based on neglect to proceed whenever the plaintiff has shown a justifiable excuse for his or her delay, and a meritorious cause of action, such as dual showing is not strictly necessary in order for the plaintiff to escape such a dismissal. McKinney's CPLR 32.6.	Does the statute prohibit the Court from dismissing an action based on neglect to proceed whenever the plaintiff has shown a justifiable excuse for his or her delay?	056631.docx	LEGALSE-00149181-LEGALSE-00149182	Condensed, SA	0.62	839	0	1	14,873	21,876	9,029
	Harvey v. Town of Tiverton, 764 A.2d 141	307A-581	Mere delay is not enough to warrant dismissal for lack of prosecution. Scittrilli v. Providence Gas Co., 415 A.2d 1040, 1042 n. 1 (R.I.1980) (citing Marion Industries, Inc. v. Providence Washington Indemnity Co., 113 R.I. 1, 138, 102, 319 A.2d 355, 358 (1974)). Although the trial court must weigh the equities between the parties, see id., it need not view the matter in a vacuum. See, e.g., L.R. Beah Corp., 448 A.2d 130, 133 (R.I.1982). In considering a motion to dismiss for failure to prosecute, the court is "required to weigh conflicting interests. On the one hand is the court's need to manage its docket, the public interest in the expeditious resolution of litigation, and the risk of prejudice to the defendants from delay; on the other hand, there is the desire to dispose of cases on their merits. Superior Court Rules Civ.Proc., Rule 41(b)(2).	In considering a motion to dismiss for failure to prosecute, the court is required to weigh conflicting interests in considering a motion to dismiss for failure to prosecute? The court is required to manage its docket, the public interest in the expeditious resolution of litigation, and the risk of prejudice to the defendants from delay; on the other hand, there is the desire to dispose of cases on their merits. Superior Court Rules Civ.Proc., Rule 41(b)(2).	Is the court is required to weigh conflicting interests in considering a motion to dismiss for failure to prosecute?	Pretrial Procedure - Memo # 8394 - C- NC_58769.docx	RDS-003299160-RDSS-003299161	SA, Sub	0.53	0	0	1	1	1	
877	Treadline 990 Stewart Partners v. RAIT Actia, 107 A.L.J.3d 788	307A-622	The test to be applied is "whether the complaint gives sufficient notice of the transactions, occurrences, or series of transactions or occurrences intended to be proved and whether the requisite elements of any cause of action known to our law can be discerned from its averments" (JP Morgan Chase v. J.H. Elk, of N.Y., Inc., 69 A.D.3d 802, 803, 893 N.Y.S.2d 237 [Internal quotation marks omitted]). Applying these principles to the instant matter, the complaint adequately alleges all of the essential elements of a cause of action to recover damages for breach of contract against RAIT Actia (see id.). Contrary to the contention of the RAIT defendants, the complaint sufficiently alleges that the parties orally agreed on all of the material terms of sale of RAIT Actia's interest in 990 SA (see Matter of Municipal Consultants & Rules v. Town of Ramapo, 47 N.Y.2d 144, 148-149, 417 N.Y.S.2d 218, 390 N.E.2d 1143).	Test to be applied in deciding motion to dismiss complaint for failure to state cause of action is whether complaint gives sufficient notice of the transactions, occurrences, or series of transactions or occurrences intended to be proved, and whether the requisite elements of any cause of action known to state's law can be discerned from its averments. McKinney's CPLR 32.11(b)(7).	"Is the test to be applied in deciding motion to dismiss complaint for failure to state cause of action is whether complaint gives sufficient notice of the transactions, occurrences, or series of transactions or occurrences intended to be proved, and whether the requisite elements of any cause of action known to state's law can be discerned from its averments?"	036995.docx	LEGALSE-00150344-LEGALSE-00150345	Condensed, SA, Sub	0.59	0	1	1	1	1	
	O'Dell v. State Farm Mut. Auto. Ins. Co., 173 Ind. App. 106	413-2	Generally, workmen's compensation is intended to afford employees an adequate and certain remedy independent of any finding of negligence for accidents arising out of and in the course of employment. IC 1971, 2-2-3-5, supra. This method of compensation based upon a reallocation of risks arose from a need to curb the harsh results rendered under the common-law with its defenses of contributory negligence, assumption of risk and fellow servant rule. Frampton v. Central Indiana Gas Co. (1973), 260 Ind. 249, 297 N.E.2d 425. A consistent extension of this policy of certain compensation was the provision for the exclusiveness of the remedy afforded by IC 1971, 2-2-3-6, supra. Valasek v. Mohr (1974), Ind.App., 307 N.E.2d 516.	Method of affording compensation to an employee based upon a reallocation of risks arises from a need to curb harsh results rendered under common law with its defenses of contributory negligence, assumption of risk, and fellow servant rule. IC 22-3-5 (1976 Ed.).	"Is the method of compensation under the workmen's compensation based on a real-location of risks arose from a need to curb the harsh results rendered under the common-law with its defenses of contributory negligence, assumption of risk and fellow servant rule?"	046430.docx	LEGALSE-00150234-LEGALSE-00150235	SA, Sub	0.64	0	0	1	1	1	
879	McDonald v. Hanahan, 328 Mass. 539	8.307-56	The instrument in suit is not payable at a time certain, and, therefore, is not negotiable. G.L. (Ter.Ed.) c. 107, § 23. But it is nevertheless within G.L. (Ter.Ed.) c. 260, § 1. Commonwealth Int. Co. v. Whitney, 1 Metc. 21, 22; Sibbey v. Phelps, 6 Cush. 172, 173; Moore v. Edwards, 187 Mass. 74, 75-76, 44 N.E. 1070; Pierce v. Tibbott, 213 Mass. 330, 331, 100 N.E. 553, 101 N.E. 100. The instrument is not payable at a time certain, and, therefore, is not negotiable. See Brown v. Gilman, 13 Mass. 158; Gray v. Bowden, 23 Pick. 282. To constitute a good promissory note there should be deducible from its face a written promise to pay the money, yet that promise need not be expressed in any particular form of words, and it will be enough if from the language used a written undertaking to pay may be fairly inferred. Daggett v. Daggett, 124 Mass. 349. Almy v. Whitlow, 126 Mass. 342, 343; Gay v. Rooke, 151 Mass. 115; 23 N.E. 835, 7 L.R.A. 392; Byrne v. Byrne, 209 Mass. 179, 180, 95 N.E. 88; Britton, Bills and Notes, *10. Daniel, Negotiable Instruments (7th ed.) *36.	To constitute a good promissory note, there should be deducible from its face a written promise to pay money, yet that promise need not be expressed in any particular form of words, and it would be enough if from language used a written undertaking to pay may be fairly inferred.	"Should a written promise to pay money be deducible from the face of a promissory note, yet that promise need not be expressed in any particular form of words?"	010365.docx	LEGALSE-00151110-LEGALSE-00151111	Condensed, SA	0.75	0	1	0	1	1	
	Chenkov, Am. Broad. Companies Inc., 27 N.Y.3d 46	307A-683	When considering these pre-answer motions to dismiss the complaint for failure to state a cause of action, we must give the pleadings a liberal construction, accept the allegations as true and accord the benefit of every possible favorable inference (see Goshen v. Mutual Life Ins. Co. of N.Y., 98 N.Y.2d 314, 326, 746 N.Y.S.2d 658, 774 N.E.2d 1190 [2002]). We may also consider affidavits submitted by plaintiffs to remedy any defects in the complaint, because the question is whether plaintiffs have a cause of action, not whether they have properly labeled or artfully stated one (see Leon v. Martinez, 84 N.Y.2d 83, 88, 614 N.Y.S.2d 972, 638 N.E.2d 511 [1994]).	When considering a pre-answer motion to dismiss the complaint for failure to state a cause of action, the court must give the pleadings a liberal construction, accept the allegations as true, and accord the plaintiffs every possible favorable inference. McKinney's CPLR 32.11(a)(7).	"In considering a pre-answer motion to dismiss a complaint for failure to state a cause of action, should a court give the pleadings a liberal construction?"	037249.docx	LEGALSE-00150810-LEGALSE-00150811	Condensed, SA, Sub	0.61	0	1	1	1	1	
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	Shay B. Pace v. Wilson, Elser, Moskowitz, Edelman & Decker, LLP 38 A.D.3d 34	307A-681	To begin with, it is important to emphasize that this appeal comes to us from an order granting a pre-discovery motion to dismiss, not an order granting summary judgment. The standards governing such pre-discovery motions are familiar. A motion to dismiss made pursuant to CPLR 3211(a)(1) will fail unless the documentary evidence that forms the basis of the complaint is so conclusively dispositive of the plaintiff's claim (see <i>McCaw v. County of Westchester</i> , 18 A.D.3d 830, 831, 796 N.Y.S.2d 384; see also <i>Heldv. Kaufman</i> , 91 N.Y.2d 425, 430-431, 671 N.Y.S.2d 429, 694 N.E.2d 430; <i>Leon v. Martinez</i> , 84 N.Y.2d 83, 88, 614 N.Y.S.2d 972, 638 N.E.2d 511; <i>Trade Source v. Westchester Wood Works</i> , 290A.D.2d 437, 438, 736 N.Y.S.2d 605; <i>Teller v. Pollack & Sons</i> , 288 A.D.2d 302, 733 N.Y.S.2d 122). Moreover, a motion to dismiss made pursuant to CPLR 3211(a)(7) will fail if, taking all facts alleged as true and according them every possible benefit, the complaint states a claim that is not legally cognizable from any cause of action known to our law (see e.g., <i>AG Capital Funding Partners, L.P. v. State St. Bank and Trust Co.</i> , 5 N.Y.3d 582, 590*591, 808 N.Y.S.2d 573, 842 N.E.2d 6471; <i>Leon v. Martinez</i> , <i>supra</i> at 87*88, 614 N.Y.S.2d 972, 638 N.E.2d 511; <i>Hayes v. Wilson</i> , 25 A.D.3d 586, 807 N.Y.S.2d 567; <i>Marchionni v. Dreier</i> , 22 A.D.3d 814, 803 N.Y.S.2d 196; <i>Rinaldi v. Casale</i> , 13 A.D.3d 603, 604*605, 788 N.Y.S.2d 137). Whether the complaint will later survive a motion for summary judgment is a question for the trier of fact. A pre-discovery motion to dismiss, of course, plays no part in the determination of a pre-discovery motion to dismiss (see <i>ERC, Inc. v. Goldman, Sachs & Co.</i> , 5 N.Y.3d 11, 19, 799 N.Y.S.2d 170, 832 N.E.2d 26).	Whether the complaint will later survive a motion for summary judgment, or whether the plaintiff will ultimately be able to prove its claims, of course, plays no part in the determination of a pre-discovery motion to dismiss. McKinney's CPLR 3211.			LEGALCASE-00154185-LEGALCASE-00154186	Condensed SA Sub 0.86	0.86	819	15,344	14,873	21,876	9,029
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902	GEAC 2006-C1 Carrington OHS v. Weiss, 233 N.E. 3d 633	307A+685	The standard of review to be applied by a trial court in deciding a motion under Rule 12(b)(3) depends upon the procedural context confronting the court.... Banc Airtel, Inc. v. Evergreen Int'l Aviation, Inc., 369 N.App. 690, 693, 611 S.E.2d 379, 382 (2005). When, as here, both the defendant's motion and the plaintiff's opposition are based on affidavits, the court issues its "see id." The court may hear the matter on affidavits presented by the respective parties.... [or] the court may direct that the matter be heard wholly or partly on oral testimony or depositions.... Id. at 694, 611 S.E.2d at 383 (alteration and omission in original) [Internal quotation marks omitted]. "If the trial court chooses to decide the motion based on affidavits, [t]he trial judge must determine the weight and sufficiency of the evidence presented in the affidavits must... See prior.... If alterations are made to the original text, they must be clearly identified and referred to as such in the record.... It is not sufficient for the court merely to state its decision as to personal jurisdiction. It considers only whether the findings of fact by the trial court are supported by competent evidence in the record; if so, this Court must affirm by competent evidence in the [internal quotation marks omitted]."	If the trial court chooses to decide a motion to dismiss for lack of jurisdiction over the person based on affidavits, the trial judge must determine the weight and sufficiency of the evidence presented in the affidavits much as a juror? Rules Civ.Proc., Rule 12(b)(2).	"If the trial court chooses to decide a motion to dismiss for lack of jurisdiction over the person based on affidavits, should the trial judge determine the weight and sufficiency of the evidence presented in the affidavits much as a juror?"	Q3942.docx	LEGALASE-00154871- LEGALASE-00154872	SA, Sub	0.78	839	15,344	14,873	21,876	9,029
903	Hillman Holding Corp. v. Estate of Catherine M. Engel, 355 So. 2d 598.	106+35	If the defendant's affidavit does fully dispute the jurisdictional allegations in the plaintiff's complaint, the burden shifts back to the plaintiff to prove by affidavit or other sworn proof that a basis for long-arm jurisdiction exists. Venetian Salami, 554 So.2d at 502; Kin Yong Lung Indus. Co., 816 So.2d at 666. If the plaintiff fails to come forward with sworn proof to refute the allegations in the defendant's affidavit and to prove jurisdiction, the defendant's motion to dismiss must be granted. Venetian Salami, 554 So.2d at 502; Kin Yong Lung Indus. Co., 816 So.2d at 666; Capital One Fin. Corp., 709 So.2d at 440; Lample, 653 So.2d at 425.	Id. no veridical defendant's affidavit is support of a motion to dismiss for lack of jurisdiction fully disputes the jurisdictional allegations in the plaintiff's complaint, the burden shifts back to the plaintiff to prove by affidavit or other sworn proof that a basis for long-arm jurisdiction exists; if the plaintiff fails to come forward with sworn proof to refute the allegations in the defendant's affidavit and to prove jurisdiction, the defendant's motion to dismiss must be granted. West's F.S.A. 5.48.139.	"If the plaintiff's sworn proof fails to refute the allegations in the defendant's affidavit contesting jurisdictional allegations, should the court grant the defendant's motion to dismiss?"	Q39515.docx	LEGALASE-00155066- LEGALASE-00155067	SA, Sub	0.21	0	0	1	1	
904	Bornn v. Univ. of Pennsylvania Sch. of Veterinary Med., 392 Pa. Super. 502	141E-1177	The courts contended in the trial court that it improperly in the school's disciplinary proceedings rendered the findings of a hearing panel and the punishment meted out by the Dean fundamentally flawed. Broadly speaking, the law is that the right to a student to attend a public or private college or university is subject to the condition that he comply with the school's rules and discipline and that the proper charge which has been imposed on him is reasonable and that the school will enforce reasonable rules and regulations in both respects. The courts will not interfere in the absence of an abuse of such discretion. 1stP.	Right of student to attend public or private college or university is subject to the condition that he comply with its scholastic and disciplinary requirements and rules, in the exercise of a broad discretion, with respect to both scholastic and disciplinary requirements.	Is the right of a student to attend a public or private college or university is subject to the condition that he comply with its scholastic and disciplinary requirements?	01.0854.docx	LEGALASE-00155337- LEGALASE-00155338	Condensed, SA, Sub	0.47	0	1	1	1	
905	Sinith v. Cent. Illinois Reg' Airport, 207 Ill. 2d 578	307A+624	Defendants' motions challenged the sufficiency of the facts alleged by plaintiff to state a cause of action. Generally, such a motion, if successful, will result in the dismissal of the complaint without further consideration of the merits. This is so because there is no need to consider the merits of the case where the pleadings do not adequately and appropriately bearing of a litigant's claim on the merits and it is well established that a cause of action should not be dismissed with prejudice unless it is clear that no set of facts can be proved under the pleading which would entitle the plaintiff to relief. See, e.g., Brown Leasing, Inc. v. Stone, 284 Ill. App.3d 1035, 1045, 220 Ill.Dec. 518, 673 N.E.2d 480 (1996); Bowers v. Abbott Laboratories, Inc., 240 Ill.App.3d 382, 182 Ill.Dec. 608, 608 N.E.2d 923 (1992). See also 50 Ill. C.R.C. Pleading ¶ 2-72, c. 95, § 109 (Ill. Sup. Ct. 1995). Where a party moves for summary judgment, leave to plead over or to file an amended pleading is a matter within the discretion of the court. In an appropriate case, a complaint may be dismissed with leave granted to plead over, or the plaintiff may seek to amend within thirty days after dismissal of a complaint where the dismissal is based on a technicality or other matter that may be cured by the filing of an amended complaint."	There exists in Illinois a policy that favors an adequate and appropriate hearing of a litigant's claim on the merits, and a cause of action should not be dismissed with prejudice unless it is clear that no set of facts can be proved under the pleading which would entitle the plaintiff to relief.	Should a cause of action not be dismissed with prejudice unless it is clear that no set of facts can be proved under the pleading which would entitle the plaintiff to relief?	Q4041.docx	LEGALASE-00155891- LEGALASE-00155893	Condensed, SA, Sub	0.77	0	1	1	1	1
906	Columbia Air Servs. v. Dept of Transp., 293 Conn. 342	307A+685	"In contrast, if the complaint is supplemented by undisputed facts established by affidavits submitted in support of the motion to dismiss... the trial court, in determining the jurisdictional issue, may consider these supplementary undisputed facts and need not conclusively presume the validity of the allegations of the complaint.... Rather, those allegations are tempered by the light shed on them by the supplementary undisputed facts.... The court may submit the motion to dismiss conclusively establish jurisdiction is lacking, and the plaintiff fails to undermine this conclusion with counteraffidavits... or other evidence, the trial court may dismiss the action without further proceedings.... If, however, the defendant submits either no proof to rebut the plaintiff's jurisdictional allegations ... or only evidence that fails to call those allegations into question... the plaintiff need not supply counteraffidavits or other evidence to support the complaint, but may rest on the jurisdictional allegations therein...."	If complaint is supplemented by undisputed facts established by affidavits submitted in support of motion to dismiss, trial court, in determining jurisdictional issue, may consider these supplementary undisputed facts and need not conclusively presume validity of allegations of complaint; rather, those allegations are tempered by light shed on them by supplementary undisputed facts, and if those affidavits or other evidence undermine this conclusion with counteraffidavits or other evidence, trial court may dismiss action without further proceedings, but if, however, defendant submits either no proof to rebut plaintiff's jurisdictional allegations or only evidence that fails to call those allegations into question, plaintiff need not supply counteraffidavits or other evidence to support complaint, but may rest on jurisdictional allegations therein.	"If complaint is supplemented by undisputed facts established by affidavits submitted in support of motion to dismiss, can a trial court consider these supplementary undisputed facts?"	Q39470.docx	LEGALASE-00155184- LEGALASE-00155185	SA, Sub	0.14	0	0	1	1	
907	Bond v. Mosserman, 391 Md. 706	228+183	The defense of lack of personal jurisdiction ordinarily is collaterally to the merits and raises questions of law. Beyond Systems, Inc. v. Realtime Gaming Holding Co., LLC, 388 Md. 1, 11-12, 878 A.2d 567, 573-74 (2005) (Citing Judge Pua V. Neimeyer and Linda Shurtliff, Maryland Rules Committee Report, 2005-2006, 10-11, 10-12, 10-13, 10-14, 10-15, 10-16, 10-17, 10-18, 10-19, 10-20, 10-21, 10-22, 10-23, 10-24, 10-25, 10-26, 10-27, 10-28, 10-29, 10-30, 10-31, 10-32, 10-33, 10-34, 10-35, 10-36, 10-37, 10-38, 10-39, 10-40, 10-41, 10-42, 10-43, 10-44, 10-45, 10-46, 10-47, 10-48, 10-49, 10-50, 10-51, 10-52, 10-53, 10-54, 10-55, 10-56, 10-57, 10-58, 10-59, 10-60, 10-61, 10-62, 10-63, 10-64, 10-65, 10-66, 10-67, 10-68, 10-69, 10-70, 10-71, 10-72, 10-73, 10-74, 10-75, 10-76, 10-77, 10-78, 10-79, 10-80, 10-81, 10-82, 10-83, 10-84, 10-85, 10-86, 10-87, 10-88, 10-89, 10-90, 10-91, 10-92, 10-93, 10-94, 10-95, 10-96, 10-97, 10-98, 10-99, 10-100, 10-101, 10-102, 10-103, 10-104, 10-105, 10-106, 10-107, 10-108, 10-109, 10-110, 10-111, 10-112, 10-113, 10-114, 10-115, 10-116, 10-117, 10-118, 10-119, 10-120, 10-121, 10-122, 10-123, 10-124, 10-125, 10-126, 10-127, 10-128, 10-129, 10-130, 10-131, 10-132, 10-133, 10-134, 10-135, 10-136, 10-137, 10-138, 10-139, 10-140, 10-141, 10-142, 10-143, 10-144, 10-145, 10-146, 10-147, 10-148, 10-149, 10-150, 10-151, 10-152, 10-153, 10-154, 10-155, 10-156, 10-157, 10-158, 10-159, 10-160, 10-161, 10-162, 10-163, 10-164, 10-165, 10-166, 10-167, 10-168, 10-169, 10-170, 1											

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908	Kraus v. Metro. Two Illinois Ctr., 146 Ill. App. 3d 210	307A-693.1	We first note that Supreme Court Rule 273 provides that "unless the order of dismissal or a statute of this state otherwise specifies, an involuntary dismissal of an action," with limited exceptions inapplicable here, "operates as an adjudication on the merits." (Emphasis added.) 187 Ill.2d R. 273; Brainerd v. First Lake County National Bank (1971), 1 Ill.App.3d 780, 275 N.E.2d 468.) An involuntary dismissal not falling under any of the exceptions of Rule 273 thus would bar a plaintiff from filing a subsequent suit involving the same parties and claims pursuant to principles of res judicata. Sullivan v. Power Construction, Inc. (1982), 108 Ill.App.3d 653, 64 Ill.Dec. 249, 439 N.E.2d 500.	Involuntary dismissal not falling under any of the exceptions of Rule 273 would bar plaintiff from filing subsequent suit involving the same parties and claims pursuant to principles of res judicata?	Will involuntary dismissal not falling under any of the exceptions of Rule 273 bar a plaintiff from filing a subsequent suit involving the same parties and claims pursuant to principles of res judicata?	Pretrial Procedure - C-00259389 - SJ_53246.docx	R055-002925188-R055-00259389	SA, Sub	0.68	0	0	1	21,876	9,079	
	In re Metro S., 38 Misc. 3d 444	24+179	The statute and regulation commit these specific and limited issues to state juvenile court. The juvenile court need not determine any other issues, such as what the motivation of the juvenile in making application for the required findings might be (in the interest of T.J., 59 So.3d 1187, 1191 (Fla. Ct.App.2011); F.L.M. v. Department of Children and Families, 912 So.2d 1244, 1249 (Fla. Ct.App.2005)); L.T. v. Department of Children and Families, 918 So.2d 1244, 1249 (Fla. Ct.App.2005)). While allowing a particular child to remain in the United States might someday pose some unknown threat to public safety (e.g., Shannon M. Ray, Note, The Breakdown of a System: The Consequence of Permitting Dangerous Illegal Juvenile Aliens to Reside in Your Community, 56 Wayne L. Rev. 819 [2010]); and whether the USCS, the federal administrative agency charged with enforcing the immigration laws, may or may not grant a particular application for adjustment of status as a SI.	Juvenile court's function in deciding motion for special findings which would permit juvenile to file application for adjustment of status as a special immigrant juvenile (SI) is limited in scope: court must determine whether, under state law, juvenile is under age 21, unmarried, dependent upon court through order of placement or other court order, whether reunification with one or both parents is not possible due to abuse, neglect or abandonment, and whether it would be contrary to juvenile's best interest to be returned to his or her previous country of nationality, and court need not determine any other issues, such as juvenile's motivation in moving for required findings, whether allowing particular child to remain in the country might pose threat to public safety, or whether United States Customs and Immigration Services (USCIS), the federal agency charged with enforcing immigration laws, may or may not grant juvenile's application for adjustment of status as a SI. Immigration and Nationality Act, 5 U.S.C. § 552(a)(2)(D); 8 U.S.C.A. § 1101(a)(2)(D); 8 C.F.R. § 204.11(c).	Should the juvenile court determine whether allowing a particular child to remain in the country might pose a threat to a public safety?	"Aliens, Immigration and Citizenship - Memo 122- RF_ 67654.docx"	R055-0038065-R055-00390606	Condensed, SA	0.1	0	1	0	1		
909	Pier v. State Farm Mut. Auto. Ins. Co., 405 Ill. App. 3d 341	307A+685	The failure to challenge or contradict supporting affidavits filed with a section 276.9 motion results in an admission of the facts stated therein. Zedella v. Gibson, 165 Ill.2d 181, 185, 209 Ill. Dec. 27, 650 N.E.2d 1000, 1002 (1995). Nor may a plaintiff simply rely on the allegations in its own complaint to refute a section 276.9 motion. In re Metro S., 38 Misc.3d 444, 450 N.E.2d 1354, 1260 (2009). The defendant satisfies its initial burden of proof on a motion to dismiss based on affirmative matter avoiding the legal effect of a claim, the burden shifts to the plaintiff to show that the defense is unfounded or requires the resolution of an essential element of material fact before it is proven. Callaghan v. Village of Channahon Hills, 401 Ill.App.3d 287, 290-91, 340 Ill. Dec. 757, 929 N.E.2d 61, 67 (2010). In order to refute evidentiary facts contained in the deponent's supporting affidavit, the plaintiff must submit evidence that contradicts the facts in the affidavit. In re Metro S., 38 Misc.3d 444, 450 N.E.2d 1354, 1260 (2009). Currency Exchange, Inc., 156 Ill.2d at 116, 189 Ill. Dec. 31, 619 N.E.2d at 735.	If the defendant satisfies its initial burden of proof on a motion to dismiss based on affirmative matter avoiding the legal effect of a claim, the burden shifts to the plaintiff to show that the defense is unfounded or requires the resolution of an essential element of material fact before it is proven?	Does the plaintiff have to show that defense is unfounded or requires the resolution of an essential element of material fact before it is proven?	039903.docx	LEGALEASE-00159539-LEGALEASE-00159540	SA, Sub	0.51	0	0	1	1		
910	Fisher & Co. v. Dept. of Treasury, 282 Mich. App. 207	371+3674	The Use Tax Act is complementary to the Michigan General Sales Tax Act. MCL 205.51 et seq., and is designed to cover those transactions not covered by the General Sales Tax. In re Metro S., 38 Misc.3d 444, 450 N.E.2d 1354, 1260 (2009). Michigan, 688 Mich. 301, 550 N.W.2d 986 (1996). This tax is collectible from each taxpayer in Michigan and is assessed "for the privilege of using, storing, or consuming tangible personal property in this state at a rate equal to 6% of the price." MCL 205.93(1). "A sales-use tax scheme is designed to make all tangible personal property, whether acquired in, or out of, the state subject to a uniform tax burden. Sales and use taxes are mutually exclusive but complementary, and are designed to exact an equal tax based on a percentage of the purchase price of the property in question." MCL 205.51 et seq., 205.93 et seq.	A sales-use tax scheme is designed to make all tangible personal property, whether acquired in, or out of, the state subject to a uniform tax burden. Sales and use taxes are mutually exclusive but complementary, and are designed to exact an equal tax based on a percentage of the purchase price of the property in question? M.C.L.A. § 205.51 et seq., 205.93 et seq.	Are sales and use taxes designed to exact an equal tax based on a percentage of the purchase price of the property in question?	040230.docx	LEGALEASE-00159840-LEGALEASE-00159841	SA, Sub	0.54	0	0	1	1		
911	Kaufman v. Bauer, 36 A.D.3d 481	307A-697	Notwithstanding this time limitation, courts have discretion to grant a restoration motion brought more than one year after the case is stricken from the calendar provided the movant demonstrates (a) the merits of his/her claim; (b) a lack of prejudice to the opposing party or parties; (c) a lack of intent to abandon action; and (d) a reasonable excuse for the delay. McKinney's, CDR 3404; N.Y.C.L. Rules, § 208.14(c).	Courts have discretion to grant motion to restore action to calendar, brought more than one year after case is stricken from calendar, provided movant demonstrates (a) merits of his/her claim; (b) lack of prejudice to opposing party or parties; (c) lack of intent to abandon action; and (d) reasonable excuse for the delay. McKinney's, CDR 3404; N.Y.C.L. Rules, § 208.14(c).	Can an action which has been automatically dismissed one year after being stricken from calendar be restored in a trial court's discretion?	040003.docx	LEGALEASE-00161206-LEGALEASE-00161207	SA, Sub	0.5	0	0	1	1		
912	Almanzar v. Rye Ridge Realty Co., 249 A.D.2d 128	307A-697	Once a case is dismissed pursuant to CPLR 3404 for failure to prosecute, a party seeking to restore to the trial calendar must show that it has taken diligent steps to prosecute the case and a lack of prejudice to the non-moving party (Ware v. Porter, 227 A.D.2d 234, 215, 642 N.Y.S.2d 778). The dismissal will not be vacated unless all four criteria are satisfied (id.).	Once a case is dismissed for failure to prosecute, a party seeking to restore to the trial calendar must show a meritorious course of action, a lack of prejudice to the non-moving party, McKinney's, CDR 3404.	"Once a case is dismissed for failure to prosecute, should a party seeking to restore it to the trial calendar show a meritorious course of action?"	Pretrial Procedure - Memo 11480 - C-035318.docx	R055-00294134-R055-00294135	Condensed, SA, Sub	0.34	0	1	1	1	1	

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914	White v. Bayless, 32 S.W.3d 271	228+181(11)	A summary judgment should not be premised on a pleading deficiency curable by amendment. In re B.I.V., 200 S.W.2d 12, 13 (Tex.1994). Accordingly, the special exceptions procedure, and not summary judgment, is the proper means to test the adequacy of the other parties' pleadings. See Texas Dept of Corrections v. Herring, 513 S.W.2d 6, 9*10 (Tex.1974). Generally, before a court may grant a "no cause of action" summary judgment, it must give the plaintiff an adequate opportunity to plead a viable cause of action. See Friesenhahn, 960 S.W.2d at 658; Massey v. Armo Steel Co., 652 S.W.2d 932, 934 (Tex.1983). However, if the plaintiff's petition affirmatively demonstrates that no cause of action exists or that the plaintiff's recovery is barred, is no opportunity to amend necessary, and summary judgment or dismissal is proper.	Generally, before a court may grant a no cause of action summary judgment, it must give the plaintiff an adequate opportunity to plead a viable cause of action, but if the plaintiff's petition affirmatively demonstrates that no cause of action exists or that plaintiff's recovery is barred, is no opportunity to amend necessary?"	"If plaintiff's petition affirmatively demonstrates that no cause of action exists or that plaintiff's recovery is barred, is no opportunity to amend necessary?"	Pretrial Procedure - Memo 11631 - C - SA 53586.docx	ROSS-003291886-ROSS-003291887	Condensed, SA	0.55	839	1	15,344	14,873	21,876	9,029
	Cavaliere v. Duff's Bus. Inst., 413 F.3d Super. 387	141E-951	This is not to say, however, that it should be the policy of this Commonwealth to bar an action against a private trade school in every instance, no matter what the allegations of the complaint. We are convinced that the distinction drawn by the Paladino and Malone courts between a trade school and a private university is not a distinction between breach of contract or misrepresentation where, for example, a private trade school has made a positive representation that a certain curriculum will be offered and the student then finds that such curriculum is not available or where the school has asserted that it is accredited or licensed to give a certain degree and it is later discovered that this is false. In such a case, the nature of the contractual undertaking and the breach thereof are clear and the plaintiff may be able to establish a cause of action without the need for pleading a specific cause of action. Cl. Reimer v. Tien, 356 F.3d Super. 192, 514 A.2d 566 (1986).	Cause of action may lie for breach of contract or misrepresentation where private school has made positive representation that a certain curriculum will be offered, and student finds that such curriculum is not available or where school has asserted that it is accredited or licensed to give certain degree and it is later discovered that this is false.	Is a cause of action for breach of contract permitted where a private school has made a positive representation that a certain curriculum will be offered and then such curriculum is not available?	017273.docx	LEGAEASE-00162135-LEGAEASE-00162137	Condensed, SA	0.63	0	1	0	1		
915	Edward L. Neelick v. Sunbeam Television Corp., 413 So. 2d 51	307A-676	We hold, therefore, that once a court has dismissed a complaint for failure to state a cause of action, but has granted the party leave to amend, that complaint may subsequently be dismissed with prejudice only if one of two notice conditions are met. (1) separate notice to plaintiff of hearing on the motion for dismissal with prejudice or entry of final judgment, or (2) the order dismissing the complaint with leave to amend specifically provides that on failure to amend within the stated time, the cause will be dismissed without further notice. See National Shawmut Bank of Boston, supra. See, e.g., Churnica v. Miami Jai-Alai, Inc., 271 So.2d 818 (Fla. 3d DCA 1977) (order requiring plaintiff to file the sworn answers within fifteen days provided that "complaint of plaintiff will be and is hereby dismissed simultaneously in default of this order"). Only such express notice will satisfy the notice requirement of Rule 1.420(b).	Once a court has dismissed a complaint for failure to state a cause of action, but has granted the party leave to amend, complaint may subsequently be dismissed with prejudice only if plaintiff is given separate notice of hearing on motion for dismissal with prejudice or entry of final judgment or if order dismissing complaint with leave to amend is made. In either event, the court must give notice to the defendant, and the cause will be dismissed without further notice. West v. F.S.A. Rules Civ.Proc., Rule 1.420(b).	"When the trial court grants a motion to dismiss or to strike an entire pleading, and the plaintiff does not seek leave to amend, can the court dismiss the complaint with prejudice?"	Pretrial Procedure - Memo 11536 - C - NS 55974.docx	ROSS-00322094-R055-003322095	Condensed, SA	0.44	0	1	0	1		
917	Shea v. Boston Edison Co., 431 Mass. 251	371+2002	Regulatory fees "share common traits that distinguish them from taxes; they are charged in exchange for a particular governmental service which benefits the party paying the fee in a manner not shared by other members of society. ... they are paid by choice, in that the party paying the fee has the option of not utilizing the governmental service and thereby avoiding the charge. ... and the charges are collected not to raise revenues but to compensate the governmental entity providing the services for its expenses.	Regulatory fees share common traits that distinguish them from taxes; they are charged in exchange for a particular governmental service which benefits the party paying the fee in a manner not shared by other members of society. ... they are paid by choice, in that the party paying the fee has the option of not utilizing the governmental service and thereby avoiding the charge, and the charges are collected not to raise revenues but to compensate the governmental entity providing the services for its expenses.	Do fees share common traits that distinguish them from taxes?	Taxation - Memo 1011 - C - L 66471.docx	ROSS-003281315-R055-003281316	Condensed, SA	0.3	0	1	0	1		
918	Davis v. Brown, 87 N.Y.2d 626	110+67.20	The better rule, and the one more in keeping with double jeopardy jurisprudence, is that the defendant may challenge questionable prosecutorial conduct based on the specifically limited theory that the defendant's argument is that the government's case against the defendant is determined by the first jury in the event the court rejects the defendant's argument. See, e.g., Weston v. Kemm, 50 F.3d 633, 637-638, cert. denied 516 U.S. 937, 116 S.Ct. 351, 133 L.Ed.2d 247; United States v. Huang, 960 F.2d 1128.	Defendant may challenge questionable prosecutorial conduct based on specifically limited theory that prosecution intended to provide mistrial, and may limit request for mistrial to grant of mistrial with prejudice, while reserving right to have case determined by first jury in event that trial court reject defendant's argument.	Can a defendant challenge questionable prosecutorial conduct based on a specifically limited theory that prosecution intended to provide mistrial?	015279.docx	LEGAEASE-00162889-LEGAEASE-00162890	Condensed, SA, Sub 0.37	0.37	0	1	1	1	1	
919	Ex parte Atiza, 913 S.W.2d 215	113H+25	We next consider whether the forfeiture of the truck amounted to punishment for the offense of delivery of marijuana. We note that the order of the forfeiture and the criminal prosecution is irrelevant to both owners, the Double Jeopardy Clause will bar the second sanction if both owners, the Double Jeopardy Clause will bar the second sanction if both owners, the Double Jeopardy Clause will bar the second sanction if both owners, the Double Jeopardy Clause will bar the second sanction if both owners, the Double Jeopardy Clause will bar the second sanction if both owners, the Double Jeopardy Clause will bar the second sanction if both owners, the Double Jeopardy Clause will bar the second sanction if both owners, the Double Jeopardy Clause will bar the second sanction if both owners, the Double Jeopardy Clause will bar the second sanction if both owners, the Double Jeopardy Clause will bar the second sanction if both owners, the Double Jeopardy Clause will bar the second sanction if both owners, the Double Jeopardy Clause will bar the second sanction if both owners, the Double Jeopardy Clause will bar 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921	State v. Dawgort, 147 So. 3d 137	1339+99	The mistrial in this case was ordered over Dawgort's objection. We have held "a mistrial declared by the trial court without the consent of the defendant will ordinarily bar further prosecution of him for the same criminal conduct." State v. Lawson, 338 So.2d 627, 629 (La.1976). However, this rule is subject to limited exceptions, where the court or the accused or as required by physical or legal necessity. U.S.C.A. Const. Amend. 5, U.S. Const. Art. I, § 13; U.S.C. Cr.P. arts. 591, 593, 595, 597, 599, 601, 603, 605, 607, 609, 611, 613, 615, 617, 619, 621, 623, 625, 627, 629, 631, 633, 635, 637, 639, 641, 643, 645, 647, 649, 651, 653, 655, 657, 659, 661, 663, 665, 667, 669, 671, 673, 675, 677, 679, 681, 683, 685, 687, 689, 691, 693, 695, 697, 699, 701, 703, 705, 707, 709, 711, 713, 715, 717, 719, 721, 723, 725, 727, 729, 731, 733, 735, 737, 739, 741, 743, 745, 747, 749, 751, 753, 755, 757, 759, 761, 763, 765, 767, 769, 771, 773, 775, 777, 779, 781, 783, 785, 787, 789, 791, 793, 795, 797, 799, 801, 803, 805, 807, 809, 811, 813, 815, 817, 819, 821, 823, 825, 827, 829, 831, 833, 835, 837, 839, 841, 843, 845, 847, 849, 851, 853, 855, 857, 859, 861, 863, 865, 867, 869, 871, 873, 875, 877, 879, 881, 883, 885, 887, 889, 891, 893, 895, 897, 899, 901, 903, 905, 907, 909, 911, 913, 915, 917, 919, 921, 923, 925, 927, 929, 931, 933, 935, 937, 939, 941, 943, 945, 947, 949, 951, 953, 955, 957, 959, 961, 963, 965, 967, 969, 971, 973, 975, 977, 979, 981, 983, 985, 987, 989, 991, 993, 995, 997, 999, 1001, 1003, 1005, 1007, 1009, 1011, 1013, 1015, 1017, 1019, 1021, 1023, 1025, 1027, 1029, 1031, 1033, 1035, 1037, 1039, 1041, 1043, 1045, 1047, 1049, 1051, 1053, 1055, 1057, 1059, 1061, 1063, 1065, 1067, 1069, 1071, 1073, 1075, 1077, 1079, 1081, 1083, 1085, 1087, 1089, 1091, 1093, 1095, 1097, 1099, 1101, 1103, 1105, 1107, 1109, 1111, 1113, 1115, 1117, 1119, 1121, 1123, 1125, 1127, 1129, 1131, 1133, 1135, 1137, 1139, 1141, 1143, 1145, 1147, 1149, 1151, 1153, 1155, 1157, 1159, 1161, 1163, 1165, 1167, 1169, 1171, 1173, 1175, 1177, 1179, 1181, 1183, 1185, 1187, 1189, 1191, 1193, 1195, 1197, 1199, 1201, 1203, 1205, 1207, 1209, 1211, 1213, 1215, 1217, 1219, 1221, 1223, 1225, 1227, 1229, 1231, 1233, 1235, 1237, 1239, 1241, 1243, 1245, 1247, 1249, 1251, 1253, 1255, 1257, 1259, 1261, 1263, 1265, 1267, 1269, 1271, 1273, 1275, 1277, 1279, 1281, 1283, 1285, 1287, 1289, 1291, 1293, 1295, 1297, 1299, 1301, 1303, 1305, 1307, 1309, 1311, 1313, 1315, 1317, 1319, 1321, 1323, 1325, 1327, 1329, 1331, 1333, 1335, 1337, 1339, 1341, 1343, 1345, 1347, 1349, 1351, 1353, 1355, 1357, 1359, 1361, 1363, 1365, 1367, 1369, 1371, 1373, 1375, 1377, 1379, 1381, 1383, 1385, 1387, 1389, 1391, 1393, 1395, 1397, 1399, 1401, 1403, 1405, 1407, 1409, 1411, 1413, 1415, 1417, 1419, 1421, 1423, 1425, 1427, 1429, 1431, 1433, 1435, 1437, 1439, 1441, 1443, 1445, 1447, 1449, 1451, 1453, 1455, 1457, 1459, 1461, 1463, 1465, 1467, 1469, 1471, 1473, 1475, 1477, 1479, 1481, 1483, 1485, 1487, 1489, 1491, 1493, 1495, 1497, 1499, 1501, 1503, 1505, 1507, 1509, 1511, 1513, 1515, 1517, 1519, 1521, 1523, 1525, 1527, 1529, 1531, 1533, 1535, 1537, 1539, 1541, 1543, 1545, 1547, 1549, 1551, 1553, 1555, 1557, 1559, 1561, 1563, 1565, 1567, 1569, 1571, 1573, 1575, 1577, 1579, 1581, 1583, 1585, 1587, 1589, 1591, 1593, 1595, 1597, 1599, 1601, 1603, 1605, 1607, 1609, 1611, 1613, 1615, 1617, 1619, 1621, 1623, 1625, 1627, 1629, 1631, 1633, 1635, 1637, 1639, 1641, 1643, 1645, 1647, 1649, 1651, 1653, 1655, 1657, 1659, 1661, 1663, 1665, 1667, 1669, 1671, 1673, 1675, 1677, 1679, 1681, 1683, 1685, 1687, 1689, 1691, 1693, 1695, 1697, 1699, 1701, 1703, 1705, 1707, 1709, 1711, 1713, 1715, 1717, 1719, 1721, 1723, 1725, 1727, 1729, 1731, 1733, 1735, 1737, 1739, 1741, 1743, 1745, 1747, 1749, 1751, 1753, 1755, 1757, 1759, 1761, 1763, 1765, 1767, 1769, 1771, 1773, 1775, 1777, 1779, 1781, 1783, 1785, 1787, 1789, 1791, 1793, 1795, 1797, 1799, 1801, 1803, 1805, 1807, 1809, 1811, 1813, 1815, 1817, 1819, 1821, 1823, 1825, 1827, 1829, 1831, 1833, 1835, 1837, 1839, 1841, 1843, 1845, 1847, 1849, 1851, 1853, 1855, 1857, 1859, 1861, 1863, 1865, 1867, 1869, 1871, 1873, 1875, 1877, 1879, 1881, 1883, 1885, 1887, 1889, 1891, 1893, 1895, 1897, 1899, 1901, 1903, 1905, 1907, 1909, 1911, 1913											

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928	Fight Against Browning Annexation v. Town of Brownsburg, 37 N.E.3d 798	307A-654	The standard of appellate review for Trial Rule 12(B)(1) motions to dismiss is a function of what occurred in the trial court. GON Co. v. Magnus, 444 F.2d 601, 602 (Ind.2001). The standard before the appellate court is whether there was sufficient evidence to support the jury's finding of law. Id. Under those circumstances no deference is afforded the trial court's conclusion because "appellate courts independently, and without the slightest deference to trial court determinations, evaluate those issues they deem to be questions of law." Id. (quoting Bader v. Johnson, 732 N.E.2d 1212, 1216 (Ind.2000)). Thus, we review de novo a trial court's ruling on a motion to dismiss under Trial Rule 12(B)(1) where the party challenging subject matter jurisdiction carries the burden of establishing that jurisdiction does not exist. Id. at 804.	If facts before trial court on motion to dismiss for lack of subject matter jurisdiction are not in dispute, then question of subject matter jurisdiction is purely one of law under those circumstances, no deference is afforded the trial court's conclusion because "appellate courts independently, and without the slightest deference to trial court determinations, evaluate those issues they deem to be questions of law." Trial Procedure Rule 12(B)(1).	"If facts before trial court on motion to dismiss for lack of subject matter jurisdiction are not in dispute, then question of subject matter jurisdiction is purely one of law? Is it a question of fact or law?"	Pretrial Procedure - Memo # 5605 - C - BP.docx	ROSS-003289893-R005- ROSS289995	Condensed SA Sub 0.53	839 0	1	15_344	34,873	21,876	9,029
	St. Paul Ins. Co. v. Hayes, 2001 ME 71, 770 A2d 611	307A-446	In determining whether a dismissal was an appropriate sanction, the trial court should consider the following factors: (1) the specific purpose of the discovery rules; (2) the nature of the case; (3) the extent of the party's failure to comply with the discovery rules; (4) prejudice to the other parties; and (5) the need for the orderly administration of justice. Our Rules of Civil Procedure are to "be construed to secure the just, speedy and inexpensive determination of every action," M.R. Civ. P. 1. Literal discovery is one way to achieve the purposes of the rules. See, e.g., In re American National Bank, 674 A.2d 506, 508 Me. 1996 (citations omitted). The purpose of the discovery rules is to "eliminate the sporting theory of justice and to enforce full disclosure" between the parties. Id. (quoting Shaw v. Bolduc, 658 A.2d 225, 235 (Me.1995)).	In determining whether a dismissal was an appropriate sanction for discovery violations, the trial court should consider the following factors: (1) the specific purpose of the discovery rules; (2) the nature of the case; (3) the extent of the party's failure to comply with the discovery rules; (4) prejudice to the other parties; and (5) the need for the orderly administration of justice. Rules Civ Proc., Rule 37(b).	"In determining the appropriate sanction to be imposed upon a party for failure to comply with the rules of civil procedure, the trial court should take into account the purpose of the specific rule at issue?"	034257.docx	LEGALCASE-00144789- LEGALCASE-00144790	SA Sub	0.56	0	0	1	1	1
929	Garcia v. Burnett, 115 S.W.3d 271	307A-697	When a claim is dismissed for want of prosecution, "the court shall restate the case upon finding a fair showing that the failure of the party or its attorney [to appear] was not intentional or mistake or that the conscious indifference but was due to an accident or mistake or that the failure has been otherwise reasonably explained." Tex.R. Civ. P. 165(4)(3). The operative standard is essentially the same as that for setting aside a default judgment. Smith v. Balcock & Wilcox Const. Co., Inc. 913 S.W.2d 469, 468 (Tex.1996). A litigant who appears in court and moves to set aside a default judgment must show that the failure to appear was not intentional or deliberate, it must also be without adequate justification. Proof of such justification "accident, mistake or other reasonable explanation" negates the intent or conscious indifference for which reinstatement can be denied. Id.; Bank One, Texas, M.A. v. Moody, 803 S.W.2d 81, 84 (Tex.1992). Also, conscious indifference means more than mere negligence. Smith, 913 S.W.2d at 468; Ivy v. Carroll, 407 S.W.2d 212, 213 (Tex.1966).	"Conscious indifference," is a term of art requiring investigation of a case following dismissal for want of prosecution. If party's failure to appear was not intentional or result of conscious indifference but was due to accident or mistake or has otherwise been reasonably explained, means more than mere negligence. Vernon's Ann.Texas Rules Civ Proc., Rule 160a, subd. 3.	"Is "conscious indifference" in context of a rule requiring prosecution I party's failure to prosecute I party's failure to appear not intentional or result of conscious indifference?"	039774.docx	LEGALCASE-00159332- LEGALCASE-00159339	Condensed SA Sub 0.65	0	1	1	1	1	1
	Rowe v. HCA Health Servs. of Oklahoma, 130 F.3d 761	307A-695	When a district court grants a motion to dismiss for failure to state a claim, it must grant the plaintiff leave to file an amended petition if the defect can be remedied. Kelly v. Abbott, 198 OK 124, 678 P.2d 1188, 1190. The district court has a duty to specify the time within which the plaintiff must file the amended petition. Id. at 781 P.2d at 1191. If the plaintiff fails to do so, the district court may refuse to set aside its dismissal has the responsibility to move the court to set a time. Id. The district court may refuse to allow a plaintiff leave to amend only if "It appears to a certainty that the plaintiff cannot state a claim." Id. at 781 P.2d at 1195 (quoting the committee comment to "2012). No such finding was made by the trial court.	"When a District Court grants a motion to dismiss for failure to state claim, it must grant plaintiff leave to file amended petition (defect can be remedied, and District Court has duty to specify time within which plaintiff must file amended petition; If District Court does not prescribe time, defendant who obtained dismissal has responsibility to move court to set time. 12 Okla.App. 32012(G).	"When a District Court grants a motion to dismiss for failure to state a claim, can a District Court refuse to allow a plaintiff leave to amend only if it appears that a plaintiff cannot state a claim?"	Pretrial Procedure - Memo #1417 - C - PB_64469.docx	ROSS-003281618-R005- ROSS281619	Condensed SA	0.49	0	1	0	1	1
931	In re Dudley, 502 B.R. 259	36P-4	A creditor in possession of a non-negotiated negotiable instrument can acquire the rights of a holder through the common law doctrine of subrogation, which allows the paper on debt to step into the shoes of the creditor vis-à-vis the party obligated to pay. Although often stemming from contractual relationships, such as here, the doctrine of subrogation is primarily an equitable remedy designed to avoid windfalls. Reliance on the doctrine of subrogation is premised on the principle that equity will not assist a volunteer. See, e.g., Goodman Industries, Inc. v. Mass Goodroom & Sons Realty, Inc., 218 B.R. 512, 519 (Bankr.D.Mass.1997). The general principle of the doctrine of subrogation is that a guarantor required to pay the debts of the principal on a note will be subrogated to the rights of the creditor against the principal. Goodman Industries, 21 B.R. at 519. In addition to asserting the rights of the creditor, the guarantor inherits only those rights the principal had in the underlying obligation. McCormick v. Brauerstein, 459 B.R. 1, 6 (D.Mass.2001). In the absence of subrogation, the doctrine of subrogation would have fashioned a five factor test; although, the doctrine may still apply absent one of the five factors. East Boston Saving Bank v. Ogan, 428 Mass. 327, 701 N.E.2d 331, 334 (1998). Equitable subrogation will apply if (1) the subrogee made the payment to protect his or her own interest; (2) the subrogee did not act as a volunteer; (3) the subrogee was not primarily liable for the debt paid; (4) the subrogee paid off the entire debt; and (5) the subrogee was not a volunteer. In re Dudley, 502 B.R. 259. The rights of the junior lienholder. Id. In light of the five factor test, the Court concludes that 50U has not established all five factors and, as such, has failed to establish that it was subrogated to the rights of Nellie Mae under the Note.	Under Massachusetts law, a five-factor test is used in determining whether equitable subrogation applies, though the doctrine may still apply absent one of the five factors, pursuant to which subrogation will apply if: (1) the subrogee made the payment to protect his or her own interest; (2) the subrogee did not act as a volunteer; (3) the subrogee was not primarily liable for the debt paid; (4) the subrogee paid off the entire debt; and (5) the subrogee was not a volunteer. In re Dudley, 502 B.R. 259. The rights of the junior lienholder.	What are the factors necessary for equitable subrogation to apply?	Subrogation - Memo 188 - ANG C.docx	ROSS-00310152-R005- ROSS310154	SA Sub	0.71	0	0	1	1	1

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933	Admiral Ins. Co. v. Arrowood Indem. Co., 471 B.R. 687	36-6-1	The Texas Supreme Court later clarified that there are two types of subrogation. Mid-Continent Ins. Co. v. Liberty Mut. Ins. Co., 238 S.W.3d 765, 774 (Tex.2007). Contractual (or contractual) subrogation is created by an agreement or contract that grants the right to pursue reimbursement from a third party in exchange for payment of a loss, and "equitable subrogation," while equitable (or legal) subrogation does not depend on contract but arises in every instance in which one person, not acting voluntarily, has paid debt or liability for another person, and the payment is primarily liable, and which in equity should have been paid by the latter.	There are two types of subrogation under Texas law, "contractual subrogation," i.e., "conventional subrogation," that is created by agreement or contract that grants right to pursue reimbursement from third party in exchange for payment of loss, and "equitable subrogation," i.e., "legal subrogation," that does not depend on contract but arises in every instance in which one person, not acting voluntarily, has paid debt or liability for another person, and the payment is primarily liable, and which in equity should have been paid by the latter.	What are the types of subrogation?	Subrogation - Memo 257 - VPC.docx	ROSS-003210344-ROSS-00310345	SA, Sub	0.48	839	15,344	14,873	21,276	9,029
934	Update Shredling v. Carloss WHI Supply Co., 84F. Supp.2d 857	257-1-32	"A court asked to stay proceedings pending arbitration must resolve four issues: first, it must determine whether the parties agreed to arbitrate; second, it must determine the scope of that agreement; third, if federal statutory claims are asserted, it must consider whether Congress intended those claims to be resolved in state and federal court; if the court concludes that Congress intended the claims to be resolved in state court, it must then decide whether to stay the balance of the proceedings pending arbitration." Oldroyd, 134 F.3d at 75-76; see also Genesco, Inc., 815 F.2d at 844 (internal citations omitted). Other courts have reduced the question of whether a particular dispute is subject to arbitration to a two-step inquiry: "whether the parties agreed to arbitrate, and, if so, whether the scope of that agreement encompasses the asserted claims." Regressive Property, 344 F.3d at 1007 (citing Genesco, Inc., 815 F.2d at 844; Meadco, Inc., 144 F.3d at 1007; and U.S. 1267 112 S.Ct. 17, 115 L.Ed.2d 1094 (1991)); see also Deloitte Noraudit A/S v. Deloitte Haskins & Sells, U.S., 9 F.3d 1060, 1063 (2d Cir.1993). The Court will address these factors in turn with respect to Plaintiff's claims and Carloss' cross-claims against Waakeisha.	A court asked to stay proceedings pending arbitration must resolve four issues: first, it must determine whether the parties agreed to arbitrate; second, it must determine the scope of that agreement; third, if federal statutory claims are asserted, it must consider whether Congress intended those claims to be resolved in state and federal court; if the court concludes that Congress intended the claims to be resolved in state court, it must then decide whether to stay the balance of the proceedings pending arbitration." Oldroyd, 134 F.3d at 75-76; see also Genesco, Inc., 815 F.2d at 844 (internal citations omitted). Other courts have reduced the question of whether a particular dispute is subject to arbitration to a two-step inquiry: "whether the parties agreed to arbitrate, and, if so, whether the scope of that agreement encompasses the asserted claims." Regressive Property, 344 F.3d at 1007 (citing Genesco, Inc., 815 F.2d at 844; Meadco, Inc., 144 F.3d at 1007; and U.S. 1267 112 S.Ct. 17, 115 L.Ed.2d 1094 (1991)); see also Deloitte Noraudit A/S v. Deloitte Haskins & Sells, U.S., 9 F.3d 1060, 1063 (2d Cir.1993). The Court will address these factors in turn with respect to Plaintiff's claims and Carloss' cross-claims against Waakeisha.	What aspects are considered by courts to determine arbitrability of a particular dispute?	Alternative Dispute Resolution - Memo 66-JS.docx	LEGALASE-0001426-LEGALASE-0001427	SA, Sub	0.58	0	0	1	1	1
935	Hess Collection Winery v. California Agr. Labor Relations Bd., 440 Cal. App. 4th 1584	23-3H+1520	Resolution of disputed contract issues through a binding process is commonly referred to as "interest arbitration" in labor law, unlike grievance arbitration, it focuses on what the terms of a new agreement should be, rather than the meaning of the terms of the old agreement, and the arbitrator is not acting as a judicial officer, construing the terms of an existing agreement and applying them to a particular set of facts, but rather, he is acting as a legislator, fashioning new contractual obligations.	Resolution of disputed contract issues through a binding process is commonly referred to as "interest arbitration" in labor law, unlike grievance arbitration, it focuses on what the terms of a new agreement should be, rather than the meaning of the terms of the old agreement, and the arbitrator is not acting as a judicial officer, construing the terms of an existing agreement and applying them to a particular set of facts, but rather, he is acting as a legislator, fashioning new contractual obligations.	What is interest arbitration?	Alternative Dispute Resolution - Memo 25-JS.docx	ROSS-003285001-ROSS-003285007	SA, Sub	0.3	0	0	1	1	1
936	Norris v. Bangor Pub. Co., 53F.Supp.2d 495	23744811	There are three categories of "public figures" who are subjected to higher burden of proof as defamation plaintiffs. (1) public figures for all purposes, who have assumed roles of especial prominence in the affairs of society, who have achieved "pervasive fame or notoriety," or (2) limited purpose public figures, those who attain the status through voluntary action, and (3) limited purpose public figures, those who "have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved". See Bruno & Stallman, Inc. v. Globe Newspaper Co., 633 F.2d 583, 588 (1st Cir.1980) (quoting Gertz, 418 U.S. at 345, 351, 58 S.Ct. 2997). In this case, Defendants urge the Court to designate Plaintiff's "limited purpose public figure" as the limited purpose of his role in the 1996 Maine Senate race.	There are three categories of "public figures" who are subjected to higher burden of proof as defamation plaintiffs. (1) public figures for all purposes, who have assumed roles of especial prominence in the affairs of society, who have assumed roles of especial prominence in the affairs of society, who have achieved "pervasive fame or notoriety," or (2) limited purpose public figures, those who attain the status through voluntary action, and (3) limited purpose public figures, those who "have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved". See Bruno & Stallman, Inc. v. Globe Newspaper Co., 633 F.2d 583, 588 (1st Cir.1980) (quoting Gertz, 418 U.S. at 345, 351, 58 S.Ct. 2997). In this case, Defendants urge the Court to designate Plaintiff's "limited purpose public figure" as the limited purpose of his role in the 1996 Maine Senate race.	What are the different categories of public figures recognized by law?	005105.docx	LEGALASE-00117203-LEGALASE-00117204	SA, Sub	0.33	0	0	1	1	1
937	Ross v. Lowitz, 222 N.J. 494	38-6-2	In short, "strict liability without fault should not be imposed, whether that activity be classified as a nuisance or a trespass, absent intentional or hazardous activity requiring a higher standard of care or, as a result of some compelling policy reason." Burke, supra, 239 N.J.Super. at 273, 571 A.2d 296; see also Rule ex rel. Kula v. Kaprielian, 322 N.J.Super. 460, 549 A.2d 1001, 1002 (1988). The court concluded that the plaintiff's claims are not ripe and the consequent label attached, "the outcome" should logically depend on whether the offending landowner somehow has made a negligent or unreasonable use of his land when compared with the rights of the party injured on the adjoining lands." Burke, supra, 239 N.J.Super. at 274, 571 A.2d 296. Both of the causes of action at issue "a claim for private nuisance and a claim for trespass" are governed by that limiting principle.	Strict liability without fault should not be imposed, whether that activity be classified as a nuisance or a trespass, absent intentional or hazardous activity requiring a higher standard of care or, as a result of some compelling policy reason.	Can strict liability without fault be imposed in nuisance or trespass actions when an intentional or hazardous activity requiring a higher standard of care or is absent?	Trespass-Memo 38-RK.docx	ROSS-003283588-ROSS-003283590	Condensed, SA	0.72	0	1	0	1	1
938	Sterling v. Garriew, 18 Md. 468	30-2-2	The purpose of the legislature in passing the Act of 1856, was, "to simplify the rules and forms of pleadings and practice in courts of law," while the Act classifies and provides the forms of action for those on contract, and for actions for wrongs independent of contract, yet it must be apparent that the distinctive nature of actions remains, although the old forms have been abolished and new ones adopted. It is impossible to ignore the fact that the new forms are not intended to govern the principles and to some extent govern the forms of action. These principles must still be recognized, however the new form may be changed or simplified. To disregard them would lead to endless confusion and tend to defeat the purposes of justice.	The act of 1856, for simplifying pleadings and practice, abolishes old forms and provides, and classifies new ones, but does not destroy the distinctive nature of actions. Substantial principles, underlying the system of jurisprudence, must be regarded, and must, to some extent, govern the forms of action.	"Despite the simplification brought in by the Act of 1856, is it necessary that a pleading must still regard substantial principles underlying the system of jurisprudence and govern the forms of actions?"	000857.docx	LEGALASE-00117891-LEGALASE-00117893	Condensed, SA, Sub	0.59	0	1	1	1	1

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Between Opinion and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
939	Goldberg v. State Farm Auto. Ins. Co., 922 So. 2d 983	366+1	The issue presented in this case is whether the payment by State Farm to higher tier parties in a subrogation proceeding is due to State Farm's obligation to its insured, or whether the payment is due to the subrogee. The court held that the payment is due to the subrogee. The court reasoned that the payment is due to the subrogee because the subrogee is the party who is entitled to the payment. The court also noted that the payment is due to the subrogee because the subrogee is the party who is entitled to the payment.	To state a cause of action for equitable subrogation, the allegations of the complaint must demonstrate that: (1) the subrogee made the payment to the creditor; (2) the subrogee was not primarily liable for the debt; (4) the subrogee paid off the entire debt; and (5) subrogation would not work any injustice to the rights of a third party.	What must the allegations of the complaint demonstrate to state a cause of action for equitable subrogation?	Subrogation - Memo # 425- C - SA.docx	ROSS-00226331	Condensed SA	0.42	839	15,344	14,873	21,876	9,079
940	Castevens v. Smith, 269 S.W.3d 222	366+1	The right of equitable subrogation arises when one pays the debt of another for which the other is primarily liable. For instance, if Castevens had paid off the Carrolls' bank note in its entirety, under this theory Castevens would step into the position of the bank and could recover from the Carrolls for the amount paid. Here, Castevens is not attempting to assert a subrogation right against the Carrolls, but asserts that this right is extinguished by the Carrolls' payment to the bank. The court held that the right is not extinguished. The court reasoned that the purpose of the equitable subrogation doctrine is to prevent the debtor from being unjustly enriched. The court also noted that the purpose of the equitable subrogation doctrine is to prevent the debtor from being unjustly enriched.	Equitable subrogation is a legal fiction whereby an obligation that is extinguished by a third party is treated as still existing to allow the creditor to seek recovery from the party primarily liable.	Is equitable subrogation a legal fiction whereby an obligation that is extinguished by a third party is treated as still existing to allow the creditor to seek recovery from the party primarily liable?	Subrogation - Memo # 502- C - NO.docx	ROSS-00311244-ROSS-00331246	Condensed SA	0.85	0	1	0	1	
941	Bendall v. Moore, 199 A.2d 531	8,307+11	The plea of performance of a bill of exchange or a promissory note is the plea of a bill of exchange or a promissory note. The plea is governed by the nature, validity, interpretation, and effect by the laws of the state where made payable, without regard to the place where it is written, signed, or dated. It being presumed that the parties contracted with reference to the laws of that place, especially where the note would be void in the place where made and valid where it was payable. The parties would be presumed to have intended to make a valid and enforceable instrument instead of one that was void.	What is the general rule that governs the interpretation of a promissory note?	What is the general rule that governs the interpretation of a promissory note?	00546.docx	LEGALISE-00123124-LEGALISE-00122125	SA, Sub	0.2	0	0	1	1	
942	Tewacow, Short, 454 L.S. 516	597+3978	As emphasized above, appellants do not challenge the sufficiency of the notice that was given prior to an adjudication purporting to determine that a mineral interest has not been used for 20 years. Appellants simply claim that the absence of specific notice prior to the lapse of a mineral right renders ineffective the self-securing feature of the statute. The court held that the notice was sufficient. The court reasoned that the notice was sufficient because it was given to the parties who were interested in the property. The court also noted that the notice was sufficient because it was given to the parties who were interested in the property.	Does the Due Process Clause require a defendant to notify a potential plaintiff that a statute of limitations is about to run?	Does the Due Process Clause require a defendant to notify a potential plaintiff that a statute of limitations is about to run?	01742L.docx	LEGALISE-00121504-LEGALISE-00121505	Condensed SA	0.6	0	1	0	1	
943	Am. Int'l Trade v. 114 Ga.App. 490	3437+433	While a plea of total failure of consideration includes a partial failure, and the partial failure is a subset of the total failure, the partial failure is not a subset of the total failure. The court held that the partial failure is not a subset of the total failure. The court reasoned that the partial failure is not a subset of the total failure because the partial failure is a subset of the total failure. The court also noted that the partial failure is not a subset of the total failure because the partial failure is a subset of the total failure.	Does a plea of total failure of consideration include a partial failure of consideration?	Does a plea of total failure of consideration include a partial failure of consideration?	02250L.docx	LEGALISE-00121582-LEGALISE-00121593	Condensed SA	0.44	0	1	0	1	
944	Roth v. Roth, 176 S.W.3d 735	3074+3	In paragraph 5 of its answer pleading, Defendant plainly stated that he was entitled to credits and set-offs in return for the reasonable value of Defendant's services to the property secured by the promissory note. Defendant's answer pleading also stated that he was entitled to credits and set-offs in return for the reasonable value of Defendant's services to the property secured by the promissory note. The court held that Defendant's answer pleading was sufficient. The court reasoned that Defendant's answer pleading was sufficient because it was given to the parties who were interested in the property. The court also noted that Defendant's answer pleading was sufficient because it was given to the parties who were interested in the property.	While motion in limine is normally used to exclude evidence in a jury trial that would be unfairly prejudicial or inflammatory, it should not be employed to choke off party's entire claim or defense.	While motion in limine is normally used to exclude evidence in a jury trial that would be unfairly prejudicial or inflammatory, it should not be employed to choke off party's entire claim or defense.	02091.docx	LEGALISE-00121589-LEGALISE-00121589	Condensed SA	0.82	0	1	0	1	

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945	Dept of Transp. v. Wallace Enterprises, 334 Ga. App. 1	307A+3	Division 1 thought a control adversely to DOT so that the trial court properly denied the motion in limine. "A motion in limine is a pretrial method of determining the admissibility of evidence, as a party may secure a pretrial ruling on the admissibility of evidence, or a ruling prohibiting any reference to certain evidence until its admissibility can be assessed in context of trial as it unfolds. [Ct.] By its very nature, the grant of a motion in limine excluding evidence suggests that there is no circumstance under which the evidence under scrutiny is likely to be admissible at trial. [Ct.] In light of this absolute, the grant of a motion in limine excluding evidence is a judicial power which must be exercised with great care." Andrews v. Wilbanks, 305 Ga. 355, 556, 458 S.E.2d 817 (1995). Here, the trial judge wisely exercised restraint in denying such motion under the circumstances of this case.	"Motion in limine" is pretrial method of determining admissibility of evidence, as a party may secure pretrial ruling on admissibility of evidence, or a ruling prohibiting any reference to certain evidence until its admissibility can be assessed in context of trial as it unfolds.	"Is a motion in limine pretrial method of determining admissibility of evidence, as a party may secure pretrial ruling on admissibility of evidence, or a ruling prohibiting any reference to certain evidence until its admissibility can be assessed in context of trial as it unfolds?"	02127.docx	LEGALISE-00122003-LEGALISE-00122005	Condensed, SA	0.7	839	15,344	14,873	21,876	9,029
	Jakobson v. Colonial Pipeline Co., 237 Ga. App. 441	307A+3	Jakobson contends that the trial court erred by admitting the testimony of Sidney McGriff regarding the appraisal of damage to Jakobson's property. At Jakobson's request, the trial court issued an order in limine precluding the parties from referring to the amount of money Jakobson received following a settlement with his title insurance company. The trial court also ordered that no party could refer to the appraisal of the property or the amount of money received. The trial court also ordered opening statements, the trial court noted that Jakobson's attorney "represented to the court that he was going to get into trees that had been handled by the . . . appraisal," at which point the trial court notified the parties that it would inform the jury that the trees already had been the subject of an appraisal process. In doing so, the trial court modified its earlier order on Jakobson's motion in limine with respect to the appraisal. A motion in limine is a pretrial method of determining the admissibility of evidence, as a party may secure a pretrial ruling on the admissibility of evidence, or a ruling prohibiting any reference to certain evidence until its admissibility can be assessed in the context of the trial as it unfolds. By its very nature, the grant of a motion in limine excluding evidence suggests that there is no circumstance under which the evidence under scrutiny is likely to be admissible at trial. In light of that absolute, the grant of a motion in limine excluding evidence is a judicial power which must be exercised with great care. (Citations and punctuation omitted.) Dept. of Transp. v. Wallace Enterprises, 334 Ga. App. 1, 4*361, 505 S.E.2d 549 (1998).	"Motion in limine" is a pretrial method of determining the admissibility of evidence, as a party may secure a pretrial ruling on the admissibility of evidence, or a ruling prohibiting any reference to certain evidence until its admissibility can be assessed in the context of the trial as it unfolds.	"Is a motion in limine pretrial method of determining admissibility of evidence, as a party may secure pretrial ruling on admissibility of evidence, or a ruling prohibiting any reference to certain evidence until its admissibility can be assessed in context of trial as it unfolds?"	Pretrial Procedure - Memo #177 - C - AP.docx	ROSS-000338425-ROSS-000332627	Condensed, SA	0.82	0	1	0	1	
946	State v. Winston, 71 Ohio App. 3d 134	110452(4)	A motion in limine is a request that the court limit or exclude use of evidence which the movant believes to be improper, and is made in advance of actual presentation of evidence to trial of fact, usually before trial.	"Motion in limine" is request that court limit or exclude use of evidence which movant believes to be improper, and is made in advance of actual presentation of evidence to trial of fact, usually before trial.	"Is a motion in limine a request that the court limit or excludes the use of evidence which the movant believes to be improper, and is made in advance of the actual presentation of the evidence to the trial of fact?"	Pretrial Procedure - Memo #384 - C - NE.docx	ROSS-00028886-ROSS-000328887	Condensed, SA	0.7	0	1	0	1	
	In re Flamingo 055, 378 B.R. 893	366+1	"[S]ubrogation is the substitution of one party in place of another with reference to a lawful claim, demand or right. Subrogation places the party paying the loss or claim (the "subrogee") in the shoes of the person who suffered the loss (the "subrogor"). Thus, when the doctrine of subrogation applies, the subrogee succeeds to the legal rights and claims of the subrogor with respect to the loss or claim." Hamada v. Far East Insurance Co., 2005 WL 1240000 (N.D. Cal. Sept. 22, 2005); see also Ham v. United States, 944 F.2d 526, 529 (9th Cir. 1993); Milgard Transportation, Inc. v. Dorcas (In re Dorcas), 318 B.R. 871, 877 (9th Cir. BAP 2004).	"Subrogation" is the substitution of one party in place of another with reference to a lawful claim, demand, or right, by which the party paying the loss or claim, that is, the "subrogee," is placed in the shoes of the person who suffered the loss, the "subrogor."	"Is subrogation the substitution of one party in place of another with reference to a lawful claim, demand, or right, by which the party paying the loss or claim, that is, the "subrogee," is placed in the shoes of the person who suffered the loss, the "subrogor?"	Subrogation - Memo # 528 - C - NO.docx	ROSS-000334741-ROSS-000331492	Condensed, SA	0.58	0	1	0	1	
948	In re Travelers Prop. Cos. Co. of Am., 485 S.W.3d 921	131+61	"As a general rule, a cause of action accrues when facts come into existence that authorize a party to seek a judicial remedy." Provident Life & Acc. Ins. Co. v. Krodt, 128 S.W.3d 211, 221 (Tex.2003). In most cases, this occurs when a wrongful act causes a legal injury, regardless of when the plaintiff learns of that injury or of all resulting damages have yet to occur."	As a general rule, a cause of action accrues when facts come into existence that authorize a party to seek a judicial remedy. In most cases, this occurs when a wrongful act causes a legal injury, regardless of when the plaintiff learns of that injury or if all resulting damages have yet to occur.	Does a cause of action accrue when facts come into existence that authorize a party to seek a judicial remedy?	Action- Memo #72 - C - UK.docx	ROSS-000289397-ROSS-000339398	Condensed, SA	0.48	0	1	0	1	
	Genter v. Blair City Convention & Sports Facilities Auth., 603 A.2d 51	148+2.1	Section 502 (b)9 of the Code permits an individual to petition for viewers to seek compensation for an injury to property where no declaration of taking has been filed. A "de facto taking" occurs when an entity clothed with the power of eminent domain has, by even a non-appropriative act or activity, substantially deprives an owner of the beneficial use and enjoyment of his property. Griggs v. County of Allegheny, 402 Pa. 411, 414, 168 A.2d 123, 124 (1961), reversed 369 U.S. 84, 82 S.Ct. 531, 77-2 A.2d 34, 38 (1953); City of Beaver Falls, 368 Pa. 189, 196-197, 82 A.2d 34, 38 (1953); Conroy-Prugh Glass Company v. Department of Transportation, 466 Pa. 384, 321 A.2d 598 (1974); Miller Appeal, 55 Pa. Cmwlth. 612, 423 A.2d 1354 (1980).	"De facto taking" occurs when entity clothed with power of eminent domain has, by even a non-appropriative act or activity, substantially deprived an owner of the beneficial use and enjoyment of his property. 26 P.S. § 1-501(c).	"What kind of taking occurs when an entity clothed with the power of eminent domain by even a non-appropriative act or activity, substantially deprives an owner of the beneficial use and enjoyment of his property?"	Eminent Domain - Memo 207 - GP.docx	ROSS-000284901-ROSS-000328492	Condensed, SA	0.7	0	1	0	1	
950														

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951	In re Fresh & Process Produce Antitrust Lit., 834 F. Supp. 2d 1141.	221+142	The classic statement of the Act of State Doctrine was made more than 80 years ago in <i>Underhill v. Essex</i> , 118 U.S. 250, 18 S.Ct. 88, 42 L.Ed. 466 (1885). Under the Act of State Doctrine, the United States is bound to respect the independence of every other sovereign State, and will not sit in judgment on the acts of a foreign government, in its territory, in relation to another State, or the acts of its government or of its officials, in relation to its territory. Redress of grievances by reason of such acts must be obtained through the means open to be availed of by sovereign powers as between themselves. "Credit Suisse v. U.S. Dist. Court for Cent. Dist. Cal.", 330 F.3d 1342, 1346 (9th Cir. 1997) (Citing <i>Underhill</i> , 118 U.S. at 252; 18 S.Ct. 88). The doctrine is not limited to the United States, but applies to all nations. See, e.g., <i>Philippines v. Marcos</i> , 862 F.2d 1555, 1361 (9th Cir. 1989) ("The thoroughly sound principle that on occasion individual litigants may have to forgo decision on the merits of their claims because the involvement of the courts in such a decision might frustrate the conduct of United States foreign policy." <i>Spectrum Stores Inc. v. Cipo Petroleum Co.</i> , 632 F.3d 938, 954 (9th Cir. 2011) (external quotations and citations omitted)).	Under "act of state doctrine," every sovereign state is bound to respect the independence of every other sovereign state, and will not sit in judgment on the acts of a foreign government, in its territory, in relation to another State, or the acts of its government or of its officials, in relation to its territory."	"Under the act of state doctrine, is every sovereign state bound to respect the independence of every other sovereign state, and will not sit in judgment on the acts of a foreign government, in its territory, in relation to another State, or the acts of its government or of its officials, in relation to its territory?"	International Law - Memo 890 - C.L.docx	ROSS-0033.0921-ROSS-0033.0922	Condensed, SA, Sub	0.69	839	1	15,344	21,876	9,079
952	<i>Houman v. Mirchev</i> , 796 F.3d 1.	221+142	Finally, it bears noting that the Houranis' claim arises under District of Columbia law. Congress did not pass the statute at issue, nor did the President sign it into law. The Political Branches thus have not made the sensitive decision to apply defamation law to foreign sovereigns' official communications about events internal to their own territory. Cf. <i>American Insurance Ass'n v. Garamendi</i> , 539 U.S. 396, 425-426, 123 S.Ct. 1006, 156 L.Ed.2d 838 (2003) (noting that the President's decision to grant government's interest in protecting official foreign government disclosures). Quite the contrary, the Political Branches have expressly determined that foreign sovereigns should enjoy immunity for claims of "libel, slander, [and] misrepresentation" involving non-commercial matters. 28 U.S.C. "1605(a)(5)(A). The function of the Act of State doctrine is to promote "international comity, respect for the sovereignty of foreign nations on their own territory, and the avoidance of embarrassment to the Executive branch of the United States in its foreign relations." <i>Kirpatrick</i> , 493 U.S. at 406, 110 S.Ct. 701. The Act of State doctrine is not a judicial creation, and the appropriateness of our decision not to tread in an area where the Political Branches have waded the courts off.	The function of the act of state doctrine is to promote international comity, respect for the sovereignty of foreign nations on their own territory, and the avoidance of embarrassment to the executive branch in its conduct of foreign relations."	"Is the function of the act of state doctrine to promote international comity, respect for the sovereignty of foreign nations on their own territory, and the avoidance of embarrassment to the executive branch of foreign relations?"	019940.docx	LEGALISE-00123624-LEGALISE-00123626	Condensed, SA	0.81	0	1	0	1	
953	<i>United States v. Keller</i> , 451 F. Supp. 631.	221+134	But the mere physical presence of Defendants before this Court, which has the effect of granting us personal jurisdiction, does not necessarily give us jurisdiction over the subject matter of the officers' claims. Under the Act of State Doctrine, the United States is bound to respect the independence of every other sovereign State, and will not sit in judgment on the acts of a foreign government, in its territory, in relation to another State, or the acts of its government or of its officials, in relation to its territory. Redress of grievances by reason of such acts must be obtained through the means open to be availed of by sovereign powers as between themselves. "Credit Suisse v. U.S. Dist. Court for Cent. Dist. Cal.", 330 F.3d 1342, 1346 (9th Cir. 1997) (Citing <i>Underhill</i> , 118 U.S. at 252; 18 S.Ct. 88). The doctrine is not limited to the United States, but applies to all nations. See, e.g., <i>Philippines v. Marcos</i> , 862 F.2d 1555, 1361 (9th Cir. 1989) ("The thoroughly sound principle that on occasion individual litigants may have to forgo decision on the merits of their claims because the involvement of the courts in such a decision might frustrate the conduct of United States foreign policy." <i>Spectrum Stores Inc. v. Cipo Petroleum Co.</i> , 632 F.3d 938, 954 (9th Cir. 2011) (external quotations and citations omitted)).	Law of nations permits exercise of criminal jurisdiction by nation under five general principles: territorial, wherein jurisdiction is based on place where offense is committed; that wherein jurisdiction is based on place where offender is located; that wherein jurisdiction is based on nationality of offender; that wherein jurisdiction is based on whether national interest is injured; universal, which amounts to physical custody of offender; and passive personal, wherein jurisdiction is based on nationality or national character of victim.	What are the general principles under which the law of nations permits exercise of criminal jurisdiction?	019988.docx	LEGALISE-00123198-LEGALISE-00123200	Condensed, SA	0.59	0	1	0	1	
954	<i>Idra v. Texaco</i> , 157 F.3d 153.	221+142	International comity is "the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation." <i>Pravin Banker Associates, Ltd. v. Banco Popular Del Peru</i> , 109 F.3d 850, 854 (2d Cir. 1997) (quoting <i>Hilton v. Guyot</i> , 159 U.S. 113, 164, 16 S.Ct. 139, 40 L.Ed. 95 (1895)). Under the principles of comity, United States courts "ordinarily refuse to review acts of foreign governments and defer to proceedings taking place in foreign countries, allowing those acts and proceedings to have extraterritorial effect in the United States." <i>Idra v. Texaco</i> , 157 F.3d at 153. The doctrine is not limited to the United States, but applies to all nations. See, e.g., <i>Philippines v. Marcos</i> , 862 F.2d 1555, 1361 (9th Cir. 1989) ("The thoroughly sound principle that on occasion individual litigants may have to forgo decision on the merits of their claims because the involvement of the courts in such a decision might frustrate the conduct of United States foreign policy." <i>Spectrum Stores Inc. v. Cipo Petroleum Co.</i> , 632 F.3d 938, 954 (9th Cir. 2011) (external quotations and citations omitted)).	Under principles of international comity, United States courts ordinarily refuse to review acts of foreign governments and defer to proceedings taking place in foreign countries, allowing those acts and proceedings to have extraterritorial effect in United States.	"Under principles of international comity, do United States courts ordinarily refuse to review acts of foreign governments and defer to proceedings taking place in foreign countries?"	020065.docx	LEGALISE-00123428-LEGALISE-00123429	SA, Sub	0.71	0	0	1	1	
955	<i>Pravin Banker Assocs. Ltd. v. Banco Popular Del Peru</i> , 109 F.3d 850.	221+142	International comity is "the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation." <i>Pravin Banker Associates, Ltd. v. Banco Popular Del Peru</i> , 109 F.3d 850, 854 (2d Cir. 1997) (quoting <i>Hilton v. Guyot</i> , 159 U.S. 113, 164, 16 S.Ct. 139, 40 L.Ed. 95 (1895)). Under the principles of comity, United States courts "ordinarily refuse to review acts of foreign governments and defer to proceedings taking place in foreign countries, allowing those acts and proceedings to have extraterritorial effect in the United States. See, e.g., <i>Idra v. Texaco</i> , 157 F.3d at 153. The doctrine is not limited to the United States, but applies to all nations. See, e.g., <i>Philippines v. Marcos</i> , 862 F.2d 1555, 1361 (9th Cir. 1989) ("The thoroughly sound principle that on occasion individual litigants may have to forgo decision on the merits of their claims because the involvement of the courts in such a decision might frustrate the conduct of United States foreign policy." <i>Spectrum Stores Inc. v. Cipo Petroleum Co.</i> , 632 F.3d 938, 954 (9th Cir. 2011) (external quotations and citations omitted)).	Under principles of international comity, United States courts ordinarily refuse to review acts of foreign governments and defer to proceedings taking place in foreign countries, allowing those acts and proceedings to have extraterritorial effect in the United States.	"Under principle of comity, do United States courts ordinarily refuse to review acts of foreign governments and defer to proceedings taking place in foreign countries?"	020075.docx	LEGALISE-00123193-LEGALISE-00123194	Condensed, SA	0.61	0	1	0	1	

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596	Beagle v. Motor Vehicle Acc. Indemnification Corp., 44 Misc. 2d 636	221+136	Both by wording of the statutes (sections 605, 610, 617 and 618 Insurance Law) and the policy endorsement, relief against the MVAIC for our purposes must be predicated upon the accident's having happened within this state. The petitioner would have us define this "state" as the area lying within its exterior boundaries. While this is the quick and customary conclusion, it is in fact an oversimplification. In its largest sense, a state is a body politic or a society of men (Keith v. Clark, 97 U.S. 454, 24 L.Ed. 1071). In a geographical sense, a state is that territory over which the particular body politic exercises sovereignty (Texas v. White, 7 Wall. 700, 74 U.S. 700, 15 L.Ed. 227). Land over which the state has jurisdiction is not necessarily a part of it even though it may lie within its exterior boundaries.	In a geographical sense, a "state" is the territory over which a particular body politic exercises sovereignty, and land over which state has neither title nor jurisdiction is not part of it, even though it may lie within its exterior boundaries.	"What does state in a geographical sense mean and does land over which a state has neither title nor jurisdiction extend even though it may lie within its exterior boundaries, form a part of it?"	International Law - Memo # 261 - C - ANC.docx	R055-003286219-R055-003286220	Condensed, SA	0.7	839	15,344	14,873	21,876	9,029	
597	Moscow Fire Ins. Co. of Moscow, Russia v. Bank of New York & Tr. Co., 161 Misc. 903	221+134	The Constitution of the U.S.S.R. must be interpreted in the light of the character of this new system and the social purposes intended by this new and heretofore unused social compact. The safest way to ascertain the scope of the principles and purposes of the new Communistic system is to look to the Constitution of the U.S.S.R. as it exists at the present time, in order to arrive at its true construction. What the Preamble of Russia, Mr. Litvinov, has done here is no doubt in Russia more likely a political, rather than a judicial question under its system, and this is especially true because the system there is not one of separated executive and legislative powers but a system in which legislative and executive powers are combined in the various organs of government. In order to determine that same question in this tribunal, namely, what the foreign laws are, there necessarily arises a judicial question. In deciding this question, we are not to be guided by the Constitution of the U.S.S.R. We recognize that its status here from the standpoint of what has been done by our executive with foreign diplomats, in an understanding akin to a treaty is purely a political question here. Since the acts performed must be taken as having been done in the highest good faith, under an exercise of powers asserted to exist by the very act, in constituting the constitutional language and the powers created, we must consider the construction which the nation itself through its diplomats and agents has placed upon the Constitution of the U.S.S.R. and we must endeavor to resolve a question of fact upon this subject, to disregard the persuasive influence of the act itself. Indeed, the mere exercise of this power has a compelling significance. This becomes especially important because in a construction of a Constitution all ordinary rules of construction should yield to a liberal interpretation; and the purposes intended by the constitutional provisions may not be defeated. Purposes and objectives of a	Power conferred on federal government of Russia to grant oil or mineral concessions cannot exclude power to assign property belonging to a state or belonging to a state which arises under budgetary and financial powers of the Union of Soviets and its centralized control of entire national economy.	Can power conferred on federal government to grant oil or mineral concessions exclude power to assign property belonging to a state which arises under budgetary and financial powers of the state?	Q20283.docx	LEGALEASE-00123868-LEGALEASE-00123870	SA, Sub	0.93	0	0	1	1		
598	Bryan v. Brown Childs, 502	307A+3	(b) The trial court erred in granting a motion in limine on the issue of whether the evidence in dispute was relevant and material to the issues presented. The evidence is not excluded by the trial court and will not be disturbed on appeal absent an abuse of discretion. However, the grant of a motion in limine excluding evidence is a judicial power which must be exercised with great care." (Citations and punctuation omitted.) Homebuilders Ass'n. of Ga. v. Morris, 238 Ga.App. 194, 195, 518 S.2d 394 (1999). Here, the trial court correctly concluded on the basis of this court's previous ruling that evidence of Brown Childs' licensing status was relevant to the issue of whether the defendant's actions constituted a violation of the Georgia Consumer Protection Act. The trial court's exercise of its discretion to modify its motion in limine, allowing Bryan to testify as to his belief regarding the revocation and its effect on his decision to repudiate the subject agreement. The trial court clearly exercised its discretion in concluding that some of the proposed testimony was necessary to show Bryan's beliefs and "part of his reason for terminating or canceling the contract" but rejecting other portions of the proffered evidence, because "the inflammatory aspects of it perhaps are too great for me to let it go to the jury."	Admission or exclusion of evidence is within the sound discretion of the trial court, but the grant of a motion in limine excluding evidence is a judicial power which must be exercised with great care.	Is admission or exclusion of evidence within the sound discretion of the trial court while granting of a motion in limine excluding evidence?	Preliminary Procedure - Memo # 111 - C - ANC (1).docx	R055-00329880-R055-00329881	Condensed, SA	0.79	0	1	0	1		
599	Rulo v. Simpson, 86 Cal. App. 4th 573	307A+3	On appeal Simpson contends, "Of course, the Plaintiff's were well aware as of the commencement of the trial that Fuhrman would not appear at the trial and that therefore, Simpson would have to rely exclusively on his former testimony at the criminal trial." This contention is contradicted by the trial court's findings. The court found, consistent with the record during the pretrial proceedings, that as late as October 1995 there still existed the possibility Fuhrman would appear voluntarily and testify. A ruling on a pretrial motion in limine is necessarily tentative because subsequent evidentiary developments may change the context. (People v. Rodriguez (1994) 8 Cal.4th 1060, 1174, 36 Cal.Rptr.2d 335, 885 P.2d 1 [in limine ruling is necessarily tentative because trial court retains discretion to make a different ruling as the evidence unfolds]; People v. Morris (1993) 153 Cal.3d 152, 189 P.2d 729, 807 P.2d 949 [subsequent events in trial may change the context and require a different ruling on a pretrial motion in limine]; and People v. Simpson until the evidence is not introduced. A pretrial motion in limine is merely an additional protective device for the opponent of the evidence, to prevent the proponent from even mentioning potentially prejudicial evidence to the jury. (Albrett Electric Corp. v. Sulwood (1987) 193 Cal.App.3d 708, 715, 238 Cal.Rptr. 496.) Simpson's argument that the failure to make an earlier motion in limine waives raising the objection later in the trial turns that rule on its head. Simpson appears to rely a theory of equitable estoppel, but the record here does not support it. The trial court found, plaintiffs did not mislead Simpson's counsel that they had no objection under Evidence Code section 1352. Simpson's counsel could not reasonably rely on plaintiff's mere failure to make a motion in limine at the early pretrial stage, before it was even determined whether Fuhrman might actually appear in court. Simpson did not suffer any significant	Ordinarily the opponent of evidence need not object until the evidence is introduced, and a pretrial motion in limine is merely an additional protective device for the opponent of the evidence, to prevent the proponent from even mentioning potentially prejudicial evidence to the jury.	Is a pretrial motion in limine merely an additional protective device for the opponent of the evidence to prevent the proponent from even mentioning potentially prejudicial evidence to the jury?	Preliminary Procedure - Memo # 210 - C - CRB.docx	R055-00312308-R055-00312310	SA, Sub	0.87	0	0	1	1		

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960	Jakobson v. Colonial Pipeline Co., 237 Cal. App. 441.	307A+3	Jakobson contends that the trial court erred by admitting the testimony of Sidney regarding the appraisal of damages to the amount of money Jakobson received following a settlement with his life insurance company. The trial court also ordered that no party could refer to the appraisal of the trees made pursuant to this settlement. However, following the parties' opening statements, the trial court noted that Jakobson's attorney "represented to the court that he was going to get into trees that had been handled by the...appraisal," at which point the trial court modified its ruling to allow the parties to refer to the appraisal of the trees as the subject of an appraisal process. In doing so, the trial court modified its earlier order on Jakobson's motion in limine with respect to the appraisal. A motion in limine is a pretrial method of determining the admissibility of evidence, as a party may secure a pretrial ruling on the admissibility of evidence or a ruling prohibiting any reference to certain evidence until its admissibility can be assessed in the context of the trial as it unfolds. By its very nature, the grant of a motion in limine excluding evidence suggests that the court has determined that the evidence is inadmissible and is likely to be admissible at trial. In light of that, the grant of a motion in limine excluding evidence is a judicial power which must be exercised with great care.	"Motion in limine" is a pretrial method of determining the admissibility of evidence, as a party may secure a pretrial ruling on the admissibility of evidence or a ruling prohibiting any reference to certain evidence until its admissibility can be assessed in the context of the trial as it unfolds.	"Is a motion in limine a pretrial method of determining the admissibility of evidence, as a party may secure a pretrial ruling on the admissibility of evidence or a ruling prohibiting any reference to certain evidence until its admissibility can be assessed in the context of the trial as it unfolds?"	03866.docx	LEGALISE-00122974- LEGALISE-00122975	Condensed, SA	0.81	839 0	1	15,344 0	21,876 1	9,079
	Philippine Exp. & Foreign Commerce Corp. v. Chudian, 218 Cal. App. 3d 1058	221+42	The act of state doctrine is a judicially created doctrine treating as nonjusticiable the political claims of a foreign government, its policy or otherwise intrude upon the legitimate domain of the executive branch of government. Allied Bank Intern. v. Banco Credito Agrícola [2d Cir. 1985] 757 F.2d 516, 520; Binco Nacional de Cuba v. Sabbatino (1964) 376 U.S. 398, 429, 84 S.Ct. 923, 940, 11 L.Ed.2d 804.) Normally the doctrine does not bar inquiry as to the validity of extraterritorial takings. (Id.; Banco Nacional de Cuba v. Chemical Bank New York [2d Cir. 1981] 658 F.2d 854, 860.) The doctrine is not a bar to claims against a foreign government or its officers or employees in connection with their business investments, treaties, page 464.) Here, Chudian argues, he is attempting to collect on a United States judgment, based on an underlying obligation owing in this jurisdiction; hence the act of state doctrine does not prevent examination of the validity of his claim. We inferentially accepted this argument when we denied a writ to Philguarantee in an earlier proceeding in which it challenged on the basis of the act of state doctrine the court's power to assign the case to our designated judges. In that proceeding, the court said of the Department of State, "so whether [it] had a position, it did not respond, a factor relevant to our determination." (See First Nat. City Bk. v. Banco Nacional de Cuba [1972] 406 U.S. 759, 767-770, 92 S.Ct. 1808, 1813*1815, 32 L.Ed.2d 446.) We agree with Chudian that the act of state doctrine does not provide immunity for Philguarantee regarding any United States assets it may have.	"Act of state doctrine" is a judicially created doctrine treating as nonjusticiable the political claims of a foreign government, its policy or otherwise intrude upon the legitimate domain of executive branch of government.	Is the act of state doctrine a judicially created doctrine treating as nonjusticiable the political claims of a foreign government, its policy or otherwise intrude upon the legitimate domain of executive branch of government?	International Law Memo 800-TH.docx	POS6-00383651-2-POS5- 00383654	Condensed, SA	0.82	0 0	1	0 0	1	
962	West v. Multibanco Comermex, S.A., 807 F.2d 820	221+42	The act of state doctrine is a combination of justiciability and abstention rule developed in pre-Erie days and reaffirmed in Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 84 S.Ct. 923, 11 L.Ed.2d 804 (1964). It prohibits U.S. courts from reaching the merits of an issue even though we otherwise have jurisdiction "in order to avoid embarrassment of foreign governments in politically sensitive matters and interference with the foreign policy of the United States." (Machinists & Aerospace Workers, (IAM) v. Organization of Petroleum Exporting Countries (OPEC), 649 F.2d 1384 (9th Cir. 1981), cert. denied, 454 U.S. 1163, 102 S.Ct. 1036, 71 L.Ed.2d 319 (1982). The classic statement of the doctrine is found in Underhill v. Hernandez, 168 U.S. 250, 18 S.Ct. 83, 42 L.Ed. 456 (1897) Every sovereign State is bound to respect the independence of every other sovereign State, and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory.	"Act of state doctrine" prohibits United States courts from reaching merits of issue, even though they otherwise have jurisdiction, in order to avoid embarrassment of foreign governments in politically sensitive matters and interference with conduct of our own foreign policy.	Does the act of state doctrine prohibit the United States courts from reaching the merits of an issue in order to avoid embarrassment of foreign governments in politically sensitive matters and interference with foreign policy?	020174.docx	LEGALISE-00124992- LEGALISE-00124993	Condensed, SA	0.73	0 0	1	0 0	1	

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963	Duff & Phelps v. Viro-Sa, 345 U.S. 187, Supp. 3d 375	51+2441	"International comity has been described by the Supreme Court as 'the recognition given within one territory to the laws, government, rights and interests of another territory, and to the rights of its own citizens or of other persons who are under the protection of its laws.' " JP Morgan Chase Bank v. Altos Hornos de Mexico, S.A., de C.V., 412 F.3d 418, 423, 2d Cir. 2005 ("JP Morgan"). (quoting Hilton v. Guyot, 159 U.S. 113, 164, 16 S.Ct. 139, 40 L.Ed. 95 (1895)). The Second Circuit has "repeatedly noted the importance of extending comity to foreign bankruptcy proceedings." In re Aguirre, AG Zureku, Banco Economico S.A., 132 F.3d 240, 244 (2d Cir. 1998) (quoting In re Aguirre, 132 F.3d 240, 244 (2d Cir. 1998)). The court is correct in concluding that the bankruptcy court's decision to apply the law of the United States is not an act of state. The court is also correct in concluding that the creditor claims that are the subject of a foreign bankruptcy proceeding require assembling all claims against the limited assets in a single proceeding. American courts regularly defer to such actions." Finenz AG, 192 F.3d at 246 (quoting Vetricks S.S. Co. S.A. v. Salen Dry Cargo A.B., 825 F.2d 709, 713-14 (2d Cir. 1987)). Allstate Life Ins., 594 F.2d at 1599 ("[W]here the court is confronted with foreign bankruptcy proceedings," "In general, this Court will afford comity to a foreign bankruptcy proceeding so long as that proceeding 'abides by fundamental standards of procedural fairness' and does not 'violate the laws or public policy of the United States.'" Finenz AG, 192 F.3d at 246 (citations omitted).	District court generally will afford comity to a foreign bankruptcy proceeding, so long as that proceeding abides by fundamental standards, procedural fairness and does not violate the laws or public policy of the United States.	"Will an American court afford comity to foreign bankruptcy proceedings only if that proceeding abides by fundamental standards of procedural fairness? If the foreign court abides by fundamental standards of procedural fairness?"	020385.docx	LEGALISE-00124256-LEGALISE-00124258	Order, SA	0.87	1	0	0	21,876	9,079
		22+1442	The Supreme Court has made it clear that the act of state doctrine is not "an inflexible and all-encompassing rule." Sabbatino, 376 U.S. at 428, 84 S.Ct. at 940. Rather than formalistically applying the doctrine whenever it is technically available, "a sort of balancing approach" can be used to determine whether the policies underlying the doctrine justify its application. Kisspatrick, 493 U.S. at 409, 110 S.Ct. at 706*07. Thus, it is appropriate to take into account that the greater the degree of comity that the United States has with respect to the foreign law, the more appropriate it is for the judiciary to render decisions regarding it, since the courts can then focus on the application of an agreed principle to circumstances of fact rather than on the sensitive task of establishing a principle not inconsistent with the national interest or with international justice. It is also evident that some aspects of international law touch much more sharply on national nerve than do others; the less important the implications of an issue are for our foreign relations, the more appropriate it is for the courts to decide it. The balance between the national interest and the international law should be shifted if the government which perpetrated the challenged act of state is no longer in existence, as in the Bernstein case, for the political interests of this country may, as a result, be measurably altered. Sabbatino, 376 U.S. at 428, 84 S.Ct. at 940.	Rather than formalistically applying act of state doctrine whenever it is technically available, a sort of balancing approach can be used to determine whether policies underlying doctrine justify its application.	"Rather than formalistically applying the act of state doctrine whenever it is technically available, can a sort of balancing approach be used to determine whether the policies underlying doctrine justify its application?"	International Law - Memo #416 - C-MLS.docx	RCS-00329405-RCS5-003295006	Condensed, SA	0.86	0	1	0	1	
964	Nat'l Coal. Gov't of Union of Burma v. Urocal, 176 F.R.D. 329	22+1442	The act of state doctrine provides that a United States court will not adjudicate a politically sensitive dispute which would require the court to judge the legality of acts of a foreign state completed within that state's territory. Northrop Corp. v. McDonnell Douglas Corp., 705 F.2d 1030, 1046 (9th Cir.), cert. denied, 464 U.S. 849, 104 S.Ct. 156, 78 L.Ed.2d 144 (1983). "The purpose of the device is to keep the judiciary from embroiling the courts and the country in the affairs of the foreign nations whose acts are challenged." Republic of the Philippines v. Marcos, 862 F.2d 1039, 1044 (9th Cir. 1989), cert. denied, 496 U.S. 960, 110 S.Ct. 29 S.Ct. 1933, 104 L.Ed.2d 604 (1989). As the act of state doctrine is based on an act of state intruding into the domain of the political branches. Id. Thus, there are "constitutional underpinnings" to the doctrine. Id. quoting Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 84 S.Ct. 923, 11 L.Ed.2d 804 (1964). The burden of establishing the applicability of the doctrine rests on the proponent. Galvuz v. Swiss Air Swiss Air Transport Co., Ltd., 873 F.2d 600 (2d Cir. 1989).	Does the act of state doctrine provide that a United States court will not adjudicate a politically sensitive dispute which would require court to judge the legality of acts of foreign state completed within that state's territory.	Does the act of state doctrine provide that a United States court will not adjudicate a politically sensitive dispute which would require the court to judge the legality of acts of foreign state completed within that state's territory?	International Law - Memo #421 - C-MLS.docx	RCS-003294603-RCS5-003295002	Condensed, SA	0.8	0	1	0	1	
		22+1442	Here, application of the act of state doctrine fails at the first step. To understand why, it is necessary to understand the concept of jus cogens norms of international law, which are certain "universally agreed-upon norms" accepted and recognized by the international community of States as a whole. "Yusuf v. Samantar, 699 F.3d 763, 774 (4th Cir. 2012), cert. denied, ___ U.S. ___, 134 S.Ct. 897, 187 L.Ed.2d 833 (2014) [internal quotation marks and citations omitted]. As a result, acts that violate jus cogens norms are void as a matter of international law. See, e.g., Siderman de Baker v. Republic of Argentina, 965 F.2d 693, 718 (9th Cir. 1992) ("International law does not recognize an act that violates jus cogens as a sovereign act.[7] It follows that an act that violates jus cogens norms cannot serve as a basis for the act of state doctrine.	An act that violates jus cogens norms of international law cannot serve as a basis for the act of state doctrine that would otherwise prevent federal courts from inquiring into the validity of the public acts a recognized foreign sovereign power committed within its own territory.	Can an act that violates jus cogens norms of international law preclude the application of the act of state doctrine that would otherwise prevent federal courts from inquiring into the validity of the public acts a recognized foreign sovereign power committed within its own territory?	020765.docx	LEGALISE-00124259-LEGALISE-00124301	Condensed, SA	0.67	0	1	0	1	
966	Worfaa v. Ali, 33 F. Supp. 3d 653	22+1442	The short of the matter is this: Courts in the United States have the authority to render judgments on the merits of cases and controversies properly presented to them. The act of state doctrine does not establish an exception for cases and controversies that may embarrass foreign governments, but merely requires that, in the process of deciding the acts of foreign sovereigns taken within their own jurisdictions, shall be deemed valid. That doctrine has no application to the present case because the validity of no foreign sovereign act is at issue.	Act of state doctrine does not establish exception to obligation of United States courts to render judgments on the merits of cases and controversies that may embarrass foreign governments, but merely requires that, in process of deciding acts of foreign sovereigns taken within their own jurisdictions, be deemed valid.	Does the act of state doctrine establish an exception to the obligation of United States courts to render judgments on the merits of cases and controversies that may embarrass foreign governments?	020817.docx	LEGALISE-00124258-LEGALISE-00124300	Condensed, SA	0.42	0	1	0	1	
		22+1442	The short of the matter is this: Courts in the United States have the authority to render judgments on the merits of cases and controversies properly presented to them. The act of state doctrine does not establish an exception for cases and controversies that may embarrass foreign governments, but merely requires that, in the process of deciding the acts of foreign sovereigns taken within their own jurisdictions, shall be deemed valid. That doctrine has no application to the present case because the validity of no foreign sovereign act is at issue.	Act of state doctrine does not establish exception to obligation of United States courts to render judgments on the merits of cases and controversies that may embarrass foreign governments, but merely requires that, in process of deciding acts of foreign sovereigns taken within their own jurisdictions, be deemed valid.	Does the act of state doctrine establish an exception to the obligation of United States courts to render judgments on the merits of cases and controversies that may embarrass foreign governments?	020817.docx	LEGALISE-00124258-LEGALISE-00124300	Condensed, SA	0.42	0	1	0	1	
967	W.S. Kipapitika & Co. v. Kipapitika & Co., 400 F.2d 149, 430 U.S. 400	22+1442	The short of the matter is this: Courts in the United States have the authority to render judgments on the merits of cases and controversies properly presented to them. The act of state doctrine does not establish an exception for cases and controversies that may embarrass foreign governments, but merely requires that, in the process of deciding the acts of foreign sovereigns taken within their own jurisdictions, shall be deemed valid. That doctrine has no application to the present case because the validity of no foreign sovereign act is at issue.	Act of state doctrine does not establish exception to obligation of United States courts to render judgments on the merits of cases and controversies that may embarrass foreign governments, but merely requires that, in process of deciding acts of foreign sovereigns taken within their own jurisdictions, be deemed valid.	Does the act of state doctrine establish an exception to the obligation of United States courts to render judgments on the merits of cases and controversies that may embarrass foreign governments?	020817.docx	LEGALISE-00124258-LEGALISE-00124300	Condensed, SA	0.42	0	1	0	1	

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568	Dread Burnham Lambert Corp. Inc. v. Galdan's Ltd. (1979), 114 F.2d 151, 21	221+142	As a general matter, however, the act of state doctrine only applies to acts occurring within the state's territorial boundaries. It is usually only when the state is acting in a manner that is inconsistent with its obligations under international law that the act of state doctrine is applied. The act of state doctrine is a principle of international law that is applied by the courts of the United States to hold that such act was a nullity.	As a general matter, act of state doctrine only applies to acts occurring within state's territorial boundaries. Because it is usually only when the state is acting in a manner that is inconsistent with its obligations under international law that the act of state doctrine is applied, the state can be said to have a reasonable expectation of dominion over the matter. It is, in turn, only when state has such an expectation that judicial interference with its acts tends to vex relationship of United States with foreign government.	Does the act of state doctrine only apply to acts occurring within state's territorial boundaries?	020910.docx	LEGALASE-00124518 LEGALASE-00124519	Condensed, SA	0.49	839	15,344	14,873	21,876	9,079
569	Durdin v. Taylor, 159 Ga. App. 675	307A+1	We affirm, in the first place we reject the argument that factual issues in a motion to dismiss are matters to be decided by a jury. A preliminary hearing of defenses of lack of jurisdiction over the person and improper hearing of defenses of lack of jurisdiction over the subject matter shall be determined by the court before trial on the application of any party. Code Ann. § 83A-121(6) (Ga.L.1966, pp. 609, 622; 1967, pp. 236, 231; 1968, pp. 1104, 1106; 1972, pp. 689, 692, 693). At such hearing factual issues shall be determined by the trial court. <i>Hatcher v. Hatcher</i> , 229 Ga. 249, 250, 190 S.E.2d 533, Marvin L. Walker & Assoc. v. A.L. Buschman, Inc., 147 Ga.App. 851, 853(1), 250 S.E.2d 532.	Preliminary hearing of defenses of lack of jurisdiction over person and improper venue, whether made in pleading or by motion, may be heard and determined by trial court before trial on application of any party, and the hearing of such issues shall be determined by trial court at such hearing. Code § 83A-121(6).	When may a preliminary hearing of defenses of lack of jurisdiction over a person and improper venue, whether made in pleading or by motion, be heard and determined by trial court?	031110.docx	LEGALASE-00125136 LEGALASE-00125137	Order, SA	0.56	1	0	0	1	
570	Carlson Hearing v. Onituck, 104 Wis.2d 175	307A+1	The trial court must have the authority to require each side to reveal in a timely manner the names of their lay witnesses in order to aid in the prompt and fair disposition of cases before them. As stated in <i>Latham v. Casey & King Corp.</i> , 23 Wis.2d 311, 314, 127 NW 2d 225, 226 (1964). "[T]he general control of the judicial business before it is essential to the court if it is to function." Every court has inherent power, exercisable in its sound discretion, consistent within the constitution and statutes, to control disposition of causes on its docket with economy of time and effort. <i>See, e.g.,</i> <i>Wright v. Wright</i> , 104 Wis.2d 175, 176, 127 NW 2d 175, 176 (1980) and <i>Jacobson v. Avestra</i> , 83 Wis.2d 240, 240 NW 2d 167 (1977). Where our supreme court discusses the doctrine of inherent powers	Every court has inherent power, exercisable in its sound discretion, consistent within Constitution and statutes, to control disposition of causes on its docket with economy of time and effort.	Does every court have an inherent power, exercisable in its sound discretion, consistent within Constitution and statutes, to control disposition of causes on its docket with economy of time and effort?	031274.docx	LEGALASE-00125202 LEGALASE-00125209	Condensed, SA	0.75	0	1	0	1	
571	Fergus v. Senger, 150 Cal. App. 4th 552	30+3959	Where, as here, the granting of a motion in limine disposes of one or more causes of action, it is the functional equivalent of the granting of a nonsuit as to those causes of action, and in such circumstances, the appellate court must view the evidence most favorably to appellants, resolving all doubts in their favor. <i>See, e.g.,</i> <i>Wright v. Wright</i> , 104 Wis.2d 175, 176 (1980) and <i>Jacobson v. Avestra</i> , 83 Wis.2d 240, 240 NW 2d 167 (1977). Judgment for respondent [on the applicable causes of action] only if it was required as a matter of law. [Citations.] [Fergus v. Centex Real Estate Corp., supra, 53 Cal.App.4th at p. 28, 61 Cal.Rptr. 2d 518].	Where the granting of a motion in limine disposes of one or more causes of action, it is the functional equivalent of the granting of a nonsuit as to those causes of action, and in such circumstances, the appellate court must view the evidence most favorably to appellants, resolving all doubts in their favor. Judgment for respondent on the applicable causes of action only if it was required as a matter of law.	Is the granting of a motion in limine the functional equivalent of the granting of a nonsuit as to those causes of action as a matter of law?	038280.docx	LEGALASE-00124210 LEGALASE-00124211	SA, Sub	0.17	0	0	1	1	
572	Raymond City Coal & Transp. Corp. v. New York Cent. & Co., 103 F.2d 36	70+30	Tariff schedules are to be construed as a whole including footnotes according to their sense and meaning as collected in the first place from the schedules themselves. If the schedules are ambiguous, the court will construe them in favor of the party who has acquired a particular sense unless, by the known usage of trade they have acquired a peculiar meaning distinct from the popular one or unless the context points out they must be understood in some special and peculiar sense. If doubtful in meaning the construction will be applied that is most favorable to the shipper.	Tariff schedules are to be construed as a whole, including footnotes, according to their sense and meaning as collected in the first place from the schedules themselves. If the schedules are ambiguous, the court will construe them in favor of the party who has acquired a particular sense unless by the known usage of trade they have acquired a peculiar meaning distinct from the popular one or unless the context points out they must be understood in some special and peculiar sense. If doubtful in meaning the construction will be applied that is most favorable to the shipper.	Should tariff schedules be construed as a whole, including footnotes?	042287.docx	LEGALASE-00125242 LEGALASE-00125243	Condensed, SA	0.18	0	1	0	1	
573	Am. Int. Co. v. Ohio Bar. of Workers Comp., 62 Ohio App. 3d 911	3667+11	We think the proper rule is that, when equitable, a surety is subrogated not only to the rights of the obligee, but also to the rights and remedies of the obligor. <i>See, e.g.,</i> <i>Wright v. Wright</i> , 104 Wis.2d 175, 176 (1980) and <i>Jacobson v. Avestra</i> , 83 Wis.2d 240, 240 NW 2d 167 (1977). Judgment for respondent [on the applicable causes of action] only if it was required as a matter of law. [Citations.] [Fergus v. Centex Real Estate Corp., supra, 53 Cal.App.4th at p. 28, 61 Cal.Rptr. 2d 518].	When equitable, surety is subrogated not only to rights of obligee but also to rights and remedies of principal against third parties, where those rights and remedies are closely related to debt that surety is called to pay under suretyship agreement.	When equitable, is a surety subrogated not only to the rights of the obligee but also to the rights and remedies of the principal against third parties, where those rights and remedies are closely related to a debt that the surety is called to pay under the suretyship agreement?	044376.docx	LEGALASE-00125252 LEGALASE-00125256	Condensed, SA	0.76	0	1	0	1	

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	San Diego Metro. Transit Dev. Bd. v. Handley Hotel, 73 Cal. App. 4th 517	1484-27	We further acknowledge that where a condemnor takes certain real property and the removal or relocation of either tangible or intangible personal property is impossible due to the condemnatory act, the owner is entitled to be justly compensated for the loss of property, regardless of its nature. See, e.g., <i>Baldwin Park Redevelopment Agency v. Irving</i> (1984) 156 Cal.App.3d 428, fn. 4, 202 Cal.Rptr. 792; see also, <i>Kimball Laundry Co. v. United States</i> (1949) 338 U.S. 1, 13-14, 16, 69 S.Ct. 1494, 93 L.Ed. 1765.) However, <i>Handley</i> provides no authority for its specific proposition that unreasonable precondemnation conduct as to real property can result in a de facto taking of personal property, tangible or intangible, where the claiming party has no property interest in the real property taken. Here, the real property interest is inextricably intertwined with the business of operating the golf course. Without the former, the latter does not exist. Consequently, where precondemnation conduct does not interrupt or affect a commercial lessee's enjoyment of its leasehold and that interest expires naturally, giving rise to no compensable real property interest, no derivative compensable personal property interest remains. This is so because once the leasehold is terminated, so is the business. Where the lease term expires naturally according to its terms, unaffected by precondemnation or preacquisition conduct, there is no causal relationship between the later taking of the real property and the demise of the business. A fortiori, there has been no related loss.	When a public entity condemns certain real property, and the removal or relocation of either tangible or intangible personal property is impossible due to the condemnatory act, the owner is entitled to be justly compensated for the loss of property, regardless of its nature. West's Ann.Cal. Const. Art. 1, § 19.	% Is the owner entitled to be justly compensated, if the removal or relocation of either tangible or intangible personal property is impossible due to the condemnatory act, the owner is entitled to be justly compensated for the loss of property, regardless of its nature. West's Ann.Cal. Const. Art. 1, § 19.	Eminent Domain - Memo 253 - GP.docx	ROSS-003260105-ROSS-00339006	SA, Sub	0.8	839	0	15,344	14,873	21,876	9,029
	974														
975	Unify Real Estate Co. v. Hudson, 371 F. Supp. 317	1484-22	It is undisputed that enforcement of the Coal Act will have a severe economic impact on the coal industry and to have the effect of driving a company into bankruptcy. I am persuaded, however, that even when a regulation results in a claimant's loss of property in its entirety, if the government does not appropriate the property for its own use, but instead acts to ensure the stability of a private fund, then no unconstitutional taking can be found. See <i>Connolly</i> , 475 U.S. at 125; 106 S.Ct. at 1026 ("Given the breadth of the governmental power to regulate, it cannot be said that the Coal Act's economic impact on the coal industry requires one person to use his or her assets for the benefit of another.").	Even when regulation results in claimant's loss of property in its entirety, if the government does not appropriate the property for its own use, but instead acts to ensure the stability of a private fund, then no unconstitutional taking can be found. U.S.C.A. Const-Amend. 5.	"Can a taking be found where a regulation results in a claimant's loss of property in its entirety, if the government does not appropriate the property for its own use, but instead acts to ensure the stability of a private fund?"	0178151.docx	LEGALISE-00126509-LEGALISE-00126510	Confirmed, SA	0.66	0	1	0	1		
	Mercer Cas. Co. v. Lewis, 41 Cal. App. 2d 918	13-465	The point that the cross-complaint upon which Collins had judgment herein was prematurely filed is not tenable. The Collins judgment against Lewis for damages arising out of the accident was entered September 27, 1937; it became final on November 26, 1937. The cross-complaint of Collins was filed December 1, 1937. The judgment against Lewis was affirmed December 14, 1937, and the judgment entered May 25, 1938. The cause was for declaratory relief and hence in equity. It is a settled rule that a court of equity having jurisdiction of the parties and of the subject matter will make a final disposition of the litigation governed by the circumstances as they are shown to exist at the time the decree is made rather than at the inception of the litigation. 19 Am.Jur. pp. 281, 281. Furthermore, if the pleading of this judgment was insufficient that was so merely because the pleading was prematurely filed. When the cause was for declaratory relief and hence in equity, it was the duty of the trial court to continue the proceedings until such time as the pleading might properly be filed. <i>Leggett v. Porter</i> , 26 Cal.App.2d 545, 79 P.2d 756; <i>Smith v. Smith</i> , 134 Cal. 117, 66 P. 81; <i>Dodge v. Superior Court</i> , 139 Cal.App. 178, 181, 182, 33 P.2d 695, 34 P.2d 501. At such later date the pleading could have been properly filed. Such was the situation when the judgment was offered in evidence. It follows that the only possible injury suffered by the plaintiff was that the pleading was filed about thirty days too soon, and a continuance for that period of time was not ordered. Manifestly those facts did not prejudice the plaintiff's rights.	A court of equity having jurisdiction of the parties and of the subject matter will make a final disposition of the litigation governed by the circumstances as they are shown to exist at the time the decree is made rather than at the inception of the litigation.	Will a court of equity having jurisdiction of the parties and of the subject matter make a final disposition of the litigation governed by the circumstances as they are shown to exist at the time the decree is made?	Action - Memo #875 - C BM.docx	ROSS-003286371-ROSS-003386973	Confirmed, SA	0.84	0	1	0	1		
976															
	Broyles v. Com., 309 Ky. 837	302-248(1)	An amended or supplemental petition in any action is permissible where it sets up facts material to the case as presented or serves to explain or perfect or cover proof of the cause of action originally stated, except where it sets up lien notes which have become due pendente lite. A new or additional cause of action cannot be thus begun and made retroactive. In such a case the amendment only takes effect from the time of filing it. See, e.g., <i>Leggett v. Porter</i> , 26 Cal.App.2d 545, 79 P.2d 756; <i>Smith v. Smith</i> , 134 Cal. 117, 66 P. 81; <i>Dodge v. Superior Court</i> , 139 Cal.App. 178, 181, 182, 33 P.2d 695, 34 P.2d 501. At such later date the pleading could have been properly filed. Such was the situation when the judgment was offered in evidence. It follows that the only possible injury suffered by the plaintiff was that the pleading was filed about thirty days too soon, and a continuance for that period of time was not ordered. Manifestly those facts did not prejudice the plaintiff's rights.	An amended or supplemental petition in any action is permissible where it sets up facts material to the case as presented or serves to explain or perfect or cover proof of the cause of action originally stated, except where it sets up lien notes which have become due pendente lite, but a new or additional cause of action cannot be thus begun and made retroactive, and in such a case the amendment takes effect only from the time of filing. Civ.Code Prac. §5 134, 135.	Is an amended or supplemental petition in any action permissible?	Action - Memo #911 - C ES.docx	ROSS-003312796	SA, Sub	0.35	0	0	0	1	1	
977															
	Fairley v. Dept of Human Servs., 623 A.2d 404	1484-22	Shown as discussed in Thorburn, the present plaintiffs held no constitutionally protected property rights in the improperly withheld past through funds, their takings claims must fail. "The concept of a taking does not apply to an overpayment of money to the state by a citizen, whether in the form of a welfare reimbursement[,] tax payment, or a fine under a statute later declared unconstitutional." Wellman, 574 A.2d at 885. "It would be quite strange indeed if, by virtue of an offer to provide benefits to needy families through the entirely voluntary AFDC program, Congress or the States were deemed to have taken some of those very family members' property." Bowen, 483 U.S. at 605, 107 S.Ct. at 3019 (emphasis in original).	Concept of taking does not apply to overpayment of money to state by citizen, whether in form of welfare reimbursement, tax payment or fine under statute later declared unconstitutional.	"Does the concept of a taking apply to an overpayment of money to the state by a citizen, whether in the form of a welfare reimbursement tax payment, or a fine under a statute later declared unconstitutional?"	0178861.docx	LEGALISE-00127344-LEGALISE-00127345	Confirmed, SA	0.75	0	1	0	1		
978															

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences	
979	Empress Casino (Jettie Corp. v. W.E. O'Neil Const. Co., 2016 L App (1st) 151166	366-35	The only Illinois case the plaintiffs offer in support of their argument is Third Swanea Properties, Inc. v. Ockerlund Construction Co., 41 Ill.App.3d 894, 354 N.E.2d 148 (1976). Although that first claim that it is not a waiver of subrogation case. In Third Swanea, the plaintiffs, owners (and lessor-occupants) of a property on which a bakery addition was being erected and that was damaged by fire during the construction, sued, inter alia, a subcontractor involved in the project. Third Swanea, 41 Ill.App.3d at 895, 354 N.E.2d 148. While the contract at issue contained a waiver of liability clause, it also obligated the plaintiffs to obtain insurance, which they apparently failed to do so, leaving them without insurance coverage. The court in Third Swanea concluded that the plaintiffs could proceed against the subcontractor with their willful and wanton claims, it found that it was unable to determine from the record presented whether the insurance, if it had been obtained by the plaintiffs, would have been so comprehensive so as to bar the plaintiffs' subrogation action or whether it would have covered only the subcontractor's negligence. The court thus remanded the case for damages directly against the subcontractor. Since the parties here do not dispute that Empress had three insurance policies in place at the time of the renovation project, and that the three insurers collectively reimbursed Empress for its fire losses, Third Swanea is inapplicable. Therefore, we conclude that nothing in our State's law or public policy prevents competent parties to a construction contract to negotiate a full waiver of subrogation rights (regardless of fault) among themselves, so as to require one of them to obtain insurance and have the insurer provide the sole recovery for the identified loss. Accordingly, we conclude that the plaintiff in the Pitt County case is the defendant in this case and is therefore the same party, and the plaintiff in this case is the administratrix of the defendant in the Pitt County case, and is, in our opinion, in contemplation of law the same party. The administratrix succeeded to all the rights and assets of her intestate and is subjected to all of his debts and liabilities, and the right to maintain an action for the wrong of death of her intestate is but a statutory continuation, extension and enlargement, of the right that existed prior to his death in favor of her intestate to maintain a cross action or counterclaim for personal injuries in the action instituted against him in Pitt County. "No action abates by the death of a party" and "the court may allow the action to be continued, by, or against, his representative or successor in interest." C.S. "461. This is recognized the continuity of the parties to actions instituted by or against a decedent prior to his death with the parties to such actions continued by or against his personal representative after his death. Latham v. Latham, 178 N.C. 12, 100 S.E. 131. The two actions, the Pitt County action and the Harnett County action, are substantially on the same subject matter, namely, damages suffered by reason of one and the same negligently caused automobile collision. All the material questions and rights involved in the Harnett County case, namely, as to whose negligence caused the collision and the quantum of damage suffered, may be determined in the Pitt County case, by the defendant therein (plaintiff herein) denying the allegations of negligence of her intestate, and filing a cross action or counterclaim for the wrongful death of her intestate. The court in the Pitt County case may determine whether her intestate, as she is permitted so to do by C.S. "521(1), since such counterclaim arises out of the transaction set forth in the complaint as the foundation of the plaintiffs' claim and is connected with the subject of the action. "A counterclaim connected with plaintiff's cause of action or	Competent parties to a construction contract are not prohibited by law or public policy from negotiating a full waiver of subrogation rights, regardless of fault, among themselves, so as to require one of them to obtain insurance and have the insurer provide the sole recovery for the identified.	Are competent parties to a construction contract prohibited by law or public policy from negotiating a full waiver of subrogation rights?	Subrogation - Memo # 1195 - C - 1806.docx	ROSS-00287020-ROSS-00287021	SA, Sub	0.87	839	0	15,344	14,873	21,876	9,029
	Johnson v. Smith, 215 N.C. 322	13-465	A counterclaim connected with plaintiff's cause of action or with subject of it will usually take its rise before action is brought, but it is not required that such counterclaim should entirely mature before action is commenced, nor even before answer is filed, but if provisions of Code permit, and justice requires amendment be allowed which will enable parties to end same controversy in one litigation, C.S. § 521(1).	Will a counterclaim connected with a plaintiff's cause of action take its rise before an action is brought?	043277.docx	LEGALEASE-00128443-LEGALEASE-00128445	Condensed, SA	0.83	0	1	0	1	1		
980	Sourlier v. State, 198 N.W.2d 720	41-3-1	Under workers' compensation law, an employer provides, secures, or pays compensation for any and all personal injuries sustained by an employee arising out of and in the course of the employment, and in such cases the employer is liable for the payment of damages or other compensation for such personal injury. Iowa Code "85.3. Damages for personal injuries generally consist of loss of earnings, medical expenses, and mental and physical pain and suffering. 22 Am.Jur.2d Damages "133 (1988). We have recognized an employee's amount of recovery in a third-party action might be greater than the workers' compensation paid," since there may be other elements of damage allowed in an action for tort, as, for instance, pain and suffering. 776 So.2d 139-40. Chicago Great W. Ry. Co., 187 Iowa 304, 97, 174 N.W. 774, 776 So.2d 139-40.	Under workers' compensation law, employer provides, secures, or pays compensation for any and all personal injuries sustained by employee arising out of and in course of employment, and in such case, employer is deemed to have liability for payment of damages or other compensation for such personal injury. I.C.A. § 85.3.	"Under workers compensation law, does an employer provide, secure, or pay compensation for any and all personal injuries sustained by an employee arising out of and in the course of employment, and in the course of employment, the employer is deemed to have liability for recovery of damages or other compensation for such personal injury?"	048555.docx	LEGALEASE-00128713-LEGALEASE-00128714	Condensed, SA	0.61	0	1	0	1		
	Pulte Homes of New York v. Planning Bd. of Town of Carmel, 136 A.D.3d 643	22-8-303	Trial courts and appellate courts have discretion pursuant to CPLR 5019(a) to correct mistakes, defects, or irregularities so as to modify an order or judgment (see Kiker v. Nassau County, 85 N.Y.2d 879, 881, 626 N.Y.S.2d 55, 649 N.E.2d 1199). "Where a movant seeks to change an order or judgment in a substantive manner, rather than correcting a mere clerical error, CPLR 5019(a) is not the proper procedural mechanism to be employed. CPLR 5019(a) is not the proper procedural mechanism to be employed, and relief should be sought through a direct appeal or by motion to vacate pursuant to CPLR 5015(b)." (Cinebovsky v. Country Club Homes, Inc., 111 A.D.3d 874, 875, 976 N.Y.S.2d 508; see Johnson v. Societe Generale S.A., 94 A.D.3d 665, 943 N.Y.S.2d 474; Goldberger v. Eisner, 90 A.D.3d 883, 886, 935 N.Y.S.2d 135; Mount Sinai Hosp. v. Country Wide Ins. Co., 81 A.D.3d 700, 701, 916 N.Y.S.2d 228).	When a movant seeks to change an order or judgment in a substantive manner, rather than correcting a mere clerical error, a motion to amend a judgment is not the proper procedural mechanism to be employed, and relief should be sought through a direct appeal or by motion to vacate. McKinney's CPLR 5015(a), 5019(a).	When a movant seeks to change an order or judgment in a substantive manner should relief be sought through a direct appeal?	008177.docx	LEGALEASE-00129059-LEGALEASE-00129060	SA, Sub	0.62	0	0	1	1		
982															

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983	Levin & Sons v. Mathys, 409 N.E.2d 1195	307A-501	In determining whether to grant a voluntary dismissal, the court should follow the traditional principle that dismissals should be allowed unless the defendant will suffer some plain legal prejudice other than the mere prospect of a second lawsuit. State v. Holder, 260 Ind. 336, 344, 295 N.E.2d 799, 801 (concurring opinion, J. Prentiss); see Lee: Moore Oil Co. v. Union Oil Co., 411 F.Supp. 730 (D.C.N.C. 1977). Decatur offered no example of any prejudice other than the fact some issues are still justiciable and that a second lawsuit causing them to incur further expense could be initiated. Thus, Decatur has not shown legal prejudice under the Indiana standard as discussed in Holder or substantial prejudice as illustrated in the above quote from Moore's Federal Practice.	In determining whether to grant a voluntary dismissal, court should follow traditional principle that dismissal should be allowed unless defendant will suffer some plain legal prejudice other than the mere prospect of a second lawsuit. Rule 16, 41(A).	"In determining whether to grant a voluntary dismissal, should a court follow the traditional principle that dismissal should be allowed unless allowed unless the defendant will suffer some plain legal prejudice other than the prospect of a second lawsuit?"	Pretrial Procedure - Memo # 1004 - C-5K.docx	ROSS-003030371-ROSS-003300372	Condensed, SA, Sub	0.68	839	15,344	14,873	21,876	9,029	
			Under his authority at pretrial conference, circuit court judge may narrow or clarify issues between parties, specify issues to be tried, specify any amendments to be made to pleadings, recognize admissions of fact and of documents, limit number of expert witnesses, make preliminary rulings on matters of law relating to case, and adjudicate competency and admissibility of evidence. 30 F.S.A. Rules of Civil Procedure, rule 1.16.	Under his authority at pretrial conference, circuit court judge may narrow or clarify issues between parties, specify issues to be tried, specify any amendments to be made to pleadings, recognize admissions of fact and of documents, limit number of expert witnesses, make preliminary rulings on matters of law relating to case, and adjudicate competency and admissibility of evidence. 30 F.S.A. Rules of Civil Procedure, rule 1.16.	What will a circuit court judge under his authority at pretrial conference do?	Q25594.docx	LEGALCASE-00125923-LEGALCASE-00125924	Condensed, SA, Sub	0.62	0	1	1	1	1	
984		307A-742.1	We favor the more liberal doctrine and rules of practice of the later adjudications. Accordingly we are of opinion that, where a plea in abatement is filed setting up in defense the pendency of a former suit for the same cause of action, the second suit will be allowed to stand and the first to be discontinued, and is not in fact wasteful. It is more equitable to allow the second suit to stand and the first to be discontinued upon proper terms, if not already discontinued, than to order an abatement of the second suit, and thereby subject the plaintiff to the possible loss of substantial rights, and, in any event, to the expense and delay of bringing a new suit.	Where a plea is filed setting up the pendency of a former suit, and it appears that the second suit was not brought to harass or vex defendant, and is not in fact wasteful, the second suit will be allowed to stand and the first to be discontinued.	"Where a plea is filed setting up the pendency of a former suit, and it appears that the second suit was not brought to harass or vex defendant, and is not in fact wasteful, will the second suit be allowed to stand and the first to be discontinued?"	Pretrial Procedure - Memo # 1023 - C-NS.docx	ROSS-003271663-ROSS-003287864	Condensed, SA	0.63	0	1	0	1	1	
			Workman's compensation is intended to be a charity, designed to provide a substitute for usual laborer's common-law remedies in tort, a liability without fault for limited compensation, capable of ready and early determination.	Workman's compensation is intended to be a charity, designed to provide a substitute for unsatisfactory common-law remedies in tort, a liability without fault for limited compensation, capable of ready and early determination.	"Workman's compensation is intended to be a charity, which is designed to provide a substitution for unsatisfactory common-law remedies in tort, a liability without fault for limited compensation, capable of ready and early determination?"	Q47833.docx	LEGALCASE-00130147-LEGALCASE-00130148	Condensed, SA	0.63	0	1	0	1	1	
986		307A-501	The intent of the legislature in enacting OCGA § 9-11-41(a) was to give a plaintiff an opportunity to escape from an "untenable position" and to re-litigate the case, and thus there is no "bad-faith exception" to the right to dismiss and later re-litigate, despite inconvenience and irritation to the defendant. C&S Indus. Supply Co. v. Procter & Gamble Paper Products Co., 139 Ga.App. 157, 403 S.E.2d 346 (1991). However, the right to re-litigate is not absolute. It is subject to the limited federal and state cases in which a counterclaim has been asserted, the right of voluntary dismissal has always been subject to a judicially created limitation prohibiting its exercise, even prior to trial, where there has already been an announcement by the court of its intention to rule in favor of the defendant. Mahanna v. O'Kelley, 185 Ga.App. 220, 363 S.E.2d 626 (1987). The reason for that limitation was explained in Peoples Bank of Tallapoosa v. Exchange Bank, 117 Ga. 366, 368, 46 S.E. 416 (1903): "The principle... is that after a party has taken the chances of litigation and knows what the actual result reached in the suit by the tribunal which it is to pass upon if, he cannot, by exercising his right of voluntary dismissal, deprive the opposite party of the victory thus gained. It is the knowledge of the actual, not of the possible, result of a case which precludes the exercise of the right of dismissal."	The intent of legislature in enacting statute regarding dismissal of actions was to give plaintiff opportunity to escape from untenable position and to re-litigate case, and thus there is no bad-faith exception to right to dismiss and later re-litigate, despite inconvenience and irritation to defendant. O.C.G.A. § 9-11-41(a).	Is the intent of the legislature in enacting a statute regarding dismissal of actions to give a plaintiff opportunity to escape from untenable position and to re-litigate the case, and thus there is no bad-faith exception to right to dismiss and later re-litigate, despite inconvenience and irritation to the case?	Pretrial Procedure - Memo # 1217 - C-DA.docx	ROSS-003271693-ROSS-003287894	SA, Sub	0.79	0	0	1	1	1	
987															

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988	Cotton v. Ostroski, 250 Neb. 911	307A+749.1	In compliance with this pretrial order, Gary's statement of elements stated that he intended to establish (1) Janice's mental capacity and (2) the fact that Janice's decision to remove her name from the certificate of deposit was motivated by Renee's undue influence. In addition, Gary listed Dr. Terry M. Himes as a witness. Gary stated that Himes would testify to, inter alia, Janice's physical and mental condition, and Himes' opinion as to Janice's mental capacity. The issues set out in a pretrial order supplant those raised in the pleadings. Englehardt v. Village of Burke, 248 Neb. 827, 539N.W.2d 430 (1995); Makela v. Central Reserve Life, 225 Neb. 543, 407 N.W.2d 357 (1987). The purpose of a pretrial conference is to simplify the issues, to amend pleadings when necessary, and to avoid unnecessary proof of facts at trial. To that end, litigants must adhere to the spirit of the procedure and are bound by the pretrial order to which no exception has been taken. In view of the pretrial order, Renee and Robbie cannot argue that they did not have notice that lack of mental capacity would be an issue in this case. We find that the petition states sufficient facts to establish that Gary was entitled to recover under the theory of lack of mental capacity as pled. The petition and the pretrial order are sufficient to establish that the issues in this case should be presented at trial and were sufficient to support the theory of recovery upon which the trial court entered judgment for Gary.	Purpose of pretrial conference is to simplify issues, to amend pleadings when necessary, and to avoid unnecessary proof of facts at trial, to that end, litigants must adhere to spirit of procedure and are bound by pretrial order to which no exception has been taken.	"Is the purpose of pretrial conference to simplify issues, to amend pleadings when necessary, and to avoid unnecessary proof of facts at trial?"	027513.docx	LEGALCASE-00130747- LEGALCASE-00130748	Condensed, SA	0.82	839 0	1	15,344 0	14,873 0	21,876 1	9,029
	Church of Peace v. City of Rock Island, 357 Ill. App. 3d 47	371+2001	Taxes are "an enforced proportional contribution levied by the state by virtue of its sovereignty for support of the government." People ex rel. County of DuPage, Smith, 211 Ill.2d at 583, 173 N.E.2d 485 (1994). In contrast, a service charge or fee is a "contractual in nature, either express or implied, and is compensation for the use of another's property or of an improvement made by another, and their amount is determined by the cost of the property or improvement and the consideration of the return which such an expenditure should yield." Smith, 211 Ill.2d at 583, 173 N.E.2d 485. The plaintiffs maintain that a tax is levied as a contribution "in return for the general welfare" while a fee is levied as a contribution "in return for a specific benefit." Village of East Dundee, 268 Ill.App.3d 327, 337, 200 Ill.Dec. 721, 635 N.E.2d 1090 (2d Dist.1994).	Taxes are an enforced proportional contribution levied by the state by virtue of its sovereignty for support of the government; in contrast, a service charge or fee is a contractual in nature, either express or implied, and is compensation for the use of another's property or of an improvement made by another, and their amount is determined by the cost of the property or improvement and the consideration of the return which such an expenditure should yield.	What is the contrast between a tax and a service charge?	Taxation - Memo # 179 - C - 55.docx	LEGALCASE-00021143- LEGALCASE-00021144	Condensed, SA	0.47	0	1	0	1	1	1
989	Fiorito v. Bellocchio, 2013 IL App (1st) 121505	307A+517.1	The bases for defendant's motion to dismiss were sections 2-1009 and 13-717 of the Code. Section 2-1009 gives a plaintiff the right to voluntarily dismiss an action, without prejudice, in whole or in part any time before trial or hearing begins. 735 ILCS 5/2-1009 (West 2000); 2013 IL App (1st) 121505, ¶¶ 46-49, 868 N.E.2d 612, 613, 614, 615, 616, 617, 618, 619, 620 (2008). Section 13-717 provides a plaintiff with the right to refile the cause of action within one year of the date of the dismissal order, regardless of the fact that the statute of limitations may have run during that time. Mercantile Holdings, Inc. v. Feldman, 258 Ill. App.3d 748, 751, 196 Ill.Dec. 800, 680 N.E.2d 965 (1994). Section 13-717 is termed a "savings statute" or "revival statute" because it "revives" a plaintiff's application on the merits has been obtained and the complaint has been dismissed for procedural reasons. Mercantile Holdings, 258 Ill.App.3d at 751, 196 Ill.Dec. 800, 630N.E.2d 985.	A plaintiff has the right to refile the cause of action within one year of the date of an order of voluntary dismissal, regardless of the fact that the statute of limitations may have run during that time. S.H.A. 735 ILCS 5/2-1009, 5/13-717.	"Does a plaintiff have the right to refile the cause of action within one year of the date of the dismissal order, regardless of the fact that the statute of limitations may have run during that time?"	027638.docx	LEGALCASE-00132266- LEGALCASE-00132267	Condensed, SA, Sub	0.77	0	1	1	1	1	1
990	Helf v. Rowe, 546 So. 2d 480	307A+749.1	La.C.C.P. Art. 1551 authorizes the trial court to modify pre-trial orders to prevent "manifest injustice." While pre-trial orders assist the trial court in the orderly management of its cases, La.C.C.P. Art. 1551 does not authorize severe limitation of a party's rights for the technical, though justifiable, violation of a pre-trial order. Here, an important and previously missed (injury to brain damage) was diagnosed approximately two months prior to trial and defense counsel was promptly notified. Plaintiff's counsel (not his original attorney) notified his opponent approximately 40 days prior to trial. He amended the answers on the third work day after the date of Dr. Howard's report and the first work day following the pre-trial deadline.	Although pretrial orders assist the trial court in the orderly management of its cases, severe limitation of a pretrial order is not authorized. La.C.C.P. art. 1551.	"Although pretrial orders assist the trial court in the orderly management of its cases, severe limitation of a pretrial order is not authorized?"	Perital Procedure - Memo # 2332 - C - KG.docx	ROSS-003248202-ROSS-00388003	Order, SA	0.69	1	0	0	1	1	
991	Reynolds v. Murphy, 266 S.W.3d 141	307A+517.1	Texas Rule of Civil Procedure 162 permits a plaintiff to voluntarily dismiss or nonsuit a case "101 any time before the plaintiff has introduced all of his evidence other than rebuttal evidence." Tex.R. Civ. P. 162, Univ. of Tex. Med. Branch at Galveston v. Estate of Blackmon ex. rel. Shultz, 195 S.W.3d 98, 100 (Tex.2006); Requinto v. Britt, 188 S.W.3d 819, 824 (Tex.App. Fort Worth 2006, pet. denied). Courts in Texas have held that "a plaintiff has a right to take a nonsuit after the defendant files a motion for summary judgment, up to the time the court announces a summary judgment, and even after the court has announced a summary judgment, if the plaintiff has not introduced all of his evidence." The effect of violating a trial court's earlier interlocutory orders, a nonsuit does not vitiate a trial court's previously-made decisions on the merits, such as a summary judgment, or even a partial summary judgment, which becomes final upon disposition of the other issues in the case. Hyundai Motor Co. v. Alvarado, 892 S.W.2d 853, 854-55 (Tex.1995); McClum, 147 S.W.3d at 652; see also Newco Drilling Co. v. Weyand, 960 S.W.2d 654, 656 (Tex.1998) (holding that court of appeals erred by failing to review merits of partial summary judgment after plaintiff allowed their case to be dismissed for want of prosecution).	Although a nonsuit may have the effect of violating a trial court's earlier interlocutory orders, a nonsuit does not vitiate a trial court's previously-made decisions on the merits, such as a summary judgment, or even a partial summary judgment, which becomes final upon disposition of the other issues in the case. Vernon's Ann.Texas Rules Civ.Proc. Rule 162.	"Although a nonsuit may have the effect of violating a trial court's earlier interlocutory orders, does a nonsuit vitiate a trial court's previously-made decisions on the merits?"	027866.docx	LEGALCASE-00131951- LEGALCASE-00131952	SA, Sub	0.72	0	0	0	1	1	
992															

ROW	Judicial Opinion	WIKMS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
993	Valladares v. Valladares, 438 N.Y.S.2d 4810	307A+402	Plaintiff should be permitted to discontinue an action without prejudice in order to rectify a tactical error (see Schiminsky v. Nelson, supra) or to simplify the form of the action to avoid juror confusion (see Baadobits v. Nussel, supra). However, generally, leave to discontinue an action without prejudice is a matter for the trial court's discretion. The court will not grant the effect of a court order in defendant's favor, since prejudice would inure to defendant (see Schneider v. Schneider, 32 A.D.2d 630, 300 N.Y.S.2d 720; Schultz v. Kobus, 15 A.D.2d 382, 224 N.Y.S.2d 372).	Generally, leave to discontinue an action without prejudice should not be granted to enable plaintiff to circumvent effect of court order in defendant's favor, since prejudice would inure to defendant. CPLR §22.1(b).	"Should leave to discontinue an action without prejudice generally not be granted in effect of a court order in a defendant's favor, since prejudice would inure to a defendant?"	Pretial Procedure - Memo # 2745 - C - SFB.docx	ROSS-003290631-ROSS-003290632	Condensed, SA	0.63	839	15,344	14,873	21,876	9,029
994	In re Sewell, 472 S.W.3d 449	307A+486	Accordingly, where a party moves to withdraw deemed admissions that are merit-preclusive, due process requires the party opposing withdrawal to prove that the party seeking withdrawal has acted in bad faith or caligin disregard of the rules." "Time Warner, Inc. v. Gonzalez, 441 S.W.3d 661, 666 (Tex.App., San Antonio 2014, pet. denied) (quoting Wheeler, 1575 W.3d at 443). Thus, although a party moving to withdraw admissions ordinarily must prove the requirements of Rule 138.3, when the deemed admissions are merit-preclusive, good cause exists absent bad faith or caligin disregard of the rules by the party seeking withdrawal. Marino, 355 S.W.3d at 604; see also, e.g., In re Sewell, 472 S.W.3d at 449. The court will not grant that presentation of the merits would be served by allowing withdrawal of the deemed admissions. See, e.g., Marino, 355 S.W.3d at 614.3	Where a party moves to withdraw deemed admissions that are merit-preclusive, due process requires the party opposing withdrawal to prove that the party seeking withdrawal has acted in bad faith or caligin disregard of the rules. U.S. Const. Amended, 14.	"Does due process require the party opposing withdrawal of deemed admissions that are merit-preclusive, to prove that the party seeking withdrawal has acted in bad faith or caligin disregard of the rules?"	Pretial Procedure - Memo # 2235 - C - V4.docx	ROSS-003287433-ROSS-003287434	SA, Sub	0.69	0	0	1	1	
995	Univ. of Texas Med. Branch at Galveston v. Estate of Blackmon or rel. Schultz, 275 S.W.3d 96	307A+17.1	Of course, the trial court need not immediately dismiss the suit upon notice of nonsuit is filed. Rule 162 states that the plaintiff's right to amend "shall not prejudice the right of an adverse party to be heard on the merits of the case." A dismissal "shall have no effect on any motion for sanctions, attorney's fees or other costs, pending at the time of dismissal." Tex. R. Civ. P. 162. A claim for affirmative relief must allege a cause of action, independent of the plaintiff's claim, on which the claimant could recover compensation or relief, even if the plaintiff abandons or is unable to establish his cause of action. BHP Petroleum Co., Inc. v. Willard, 800 S.W.2d 835, 841 (Tex.1996). UTHB has not raised a cause of action, independent of the plaintiff's claim, on which it could recover costs, attorney fees, and sanctions to remain viable in the trial court. It does not forestall the nonsuit's effect of rendering the merits of the case moot. Vernon's Am'Texas Rules Civ.Proc., Rule 162.	A trial court has discretion to defer signing an order of dismissal so that it can allow a reasonable amount of time for holding hearings on these matters which are collateral to the merits of the underlying case. Holding hearings on matters which are collateral to the merits of the underlying case?	Does the trial court have discretion to defer signing an order of dismissal so that it can allow a reasonable amount of time for holding hearings on matters which are collateral to the merits of the underlying case?	Pretial Procedure - Memo # 2307 - C - N6.docx	ROSS-003327933-ROSS-003327934	SA, Sub	0.69	0	0	1	1	
996	Boyd v. Boyd, 85 So. 3d 409	307A+483	We note from the outset that this Court has strictly enforced the application of Rule 36 according to its terms. Glickman v. Glickman, 938 So.2d 100, 938 So.2d 100 (Fla.1st DCA 2007), cert. denied, 938 So.2d 100, 938 So.2d 100 (Fla.1st DCA 2007). The rule states that a party has thirty days in which to submit a response to a request for admission, or within forty-five days after service of the summons upon a defendant. M.A.C.P. 346a. Matters will be deemed admitted after this time period, unless the court allows for either a shorter or longer period of time in which to answer. Id. However, the trial court, on motion, has the discretion to "permit withdrawal or amendment (of a matter admitted) to the extent that the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits." M.R.C.P. 36(b). Further, the trial court has considerable discretion over matters of discovery, and we will not disturb those decisions absent an abuse of discretion. In re Dissolution of Marriage of Leverock & Hanthby, 23 So. 3d 424, 432 (2d DCA 2009) (quotations omitted). Specifically, "[i]f certain amount of discovery is necessary to the proper presentation of the case, the court will take matters as admitted." Enawood v. Rowles, 798 So.2d 508, 514 (13) (Miss.2001) [citation omitted].	Matters will be deemed admitted if no response to request for admission is submitted after 30 days, unless the court allows for either a shorter or longer period of time in which to answer. Id. However, the trial court, on motion, has the discretion to "permit withdrawal or amendment (of a matter admitted) to the extent that the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits. Rules Civ.Proc., Rule 36(a, b).	"Will matters be deemed admitted if no response to request for admission is submitted after thirty days, unless the court allows for either a shorter or longer period of time in which to answer?"	028882.docx	LEGALCASE-00132860-LEGALCASE-00132861	Order, SA	0.6	1	0	0	1	
997	Lacombe v. Carter, 975 So. 2d 687	386+4463	In an action for trespass, it is incumbent upon plaintiff to show damages based on the result or the consequences of an injury flowing from the act. The plaintiff must show a proximate cause between the act and the damage, and this burden of proof may be met by either direct or circumstantial evidence. One who is wronged by a trespass may recover general damages suffered, including mental and physical pain, anguish, distress, and inconvenience.	Is it incumbent upon the plaintiff to show damages based on the result or the consequences of an injury flowing from the act of trespass?	Is it incumbent upon the plaintiff to show damages based on the result or the consequences of an injury flowing from the act of trespass?	047314.docx	LEGALCASE-00133283-LEGALCASE-00133284	Condensed, SA	0.33	0	1	0	1	
998	United Air Lines Transp. Corp. v. Indus. Comm'n, 107 Utah 52	41+1-1	With this statement of facts, summary of issues and provisions of pertinent statutes before us, we shall endeavor to analyze our problems. The fundamental principle of the law of workmen's compensation was stated in the opinion of the court in the case of Industrial Union of Marine and Shipbuilding Workers of America v. American Shipbuilding Co., 360 U.S. 591, 80 S.Ct. 1361, 24 L.Ed.2d 583, 360 U.S. 591, 80 S.Ct. 1361, 24 L.Ed.2d 583. The numerous hazards which accompanied the growth of industry with the development of power driven machinery antedated the common law. Need for a new method and means of giving greater protection and security to the worker and his dependents against injury and death occurring in the course of employment gave birth to legislative law. This creature of the Legislature with improvements and refinements is now commonly called workmen's compensation.	Is workmens compensation the name commonly used to designate the method and means created by statute for giving greater protection and security to the workman and his dependents against injury and death occurring in the course of employment. Utah Code §19-2, §2-1, §1-1, etc.	Is workmens compensation the name commonly used to designate the method and means created by statute for giving greater protection and security to the workman and his dependents against injury and death occurring in the course of employment?	Workers Compensation - Memo #241 IAC.docx	ROSS-003301368-ROSS-003301369	Condensed, SA, Sub	0.64	0	1	1	1	1

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences	
	Williams v. Nat'l Mfg. Co., 303 S.W.2d 398	307A-517.1	A party has an absolute right to take a nonsuit of a pending claim if it is taken in a timely manner. See Tex.R. Civ.P. 162. Moreover, the granting of a nonsuit is merely a ministerial act by the trial court. Greenberg v. Brookshire, 640 S.W.2d 970, 972 (Tex.1382) (orig. proceeding) [per curiam]. See also BHP Petroleum Co. v. Millard, 800 S.W.2d 838, 840-41 (Tex.1990) [orig. proceeding]. If an opposing party has no claim for affirmative relief pending, a trial court's jurisdiction over a cause ends when a notice of nonsuit is given for the only pending claim for affirmative relief. In effect, in such a situation, the filing of a nonsuit divests a trial court of its subject matter jurisdiction. See State ex rel. Dierman v. Garry, 183 Tex. 565, 566 (1969) (per curiam). See also BHP Petroleum Co. v. Millard, 800 S.W.2d 838, 840-41 (Tex.1990) [orig. proceeding]; see also Strawder v. Thomas, 846 S.W.2d 51, 59 (Tex.App. Corpus Christi 1992, no writ); Ex parte Heile, 477 S.W.2d 379, 384-85 (Tex.Civ.App. Corpus Christi 1972, orig. proceeding). A party's right to take a nonsuit, however, does not affect an opposing party's pending claim for affirmative relief because the trial court retains jurisdiction. Although a nonsuit of a party's claims does not end an adverse party's right to be heard on its pending claims for affirmative relief, a claim for affirmative relief filed after a notice of nonsuit is usually ineffective to prevent termination of the lawsuit. See Progressive Ins. Co. v. Hartman, 788 S.W.2d 424, 426 (Tex.App. Dallas 1990, orig. proceeding); Strawder, 846 S.W.2d at 59; see also Short v. Hepburn, 89 Tex. 522, 625, 35 S.W. 1056, 1057 (1896); PHB, Inc. v. Goldsmith, 534 S.W.2d 607 (Tex. Civ. App. Houston [14th Dist.], writ ref'd n.r.e., 539 S.W.2d 607 (Tex.1976)).	Although nonsuit of party's claims does not end adverse party's right to be heard on its pending claims for affirmative relief, claim for affirmative relief filed after notice of lawsuit is usually ineffective to prevent termination of lawsuit. Vernon's Ann. Texas Rules Civ. Proc., Rule 162.	"Although nonsuit of party's claims does not end adverse party's right to be heard on its pending claims for affirmative relief, is a claim for affirmative relief filed after notice of nonsuit is usually ineffective to prevent termination of lawsuit?"	028251.docx	LEGALISE-001338608- LEGALISE-001338609	Condensed, SA	0.85	839 0	1	15,344 0	14,873 0	21,876 1	9,079
	999														
1000	Urbonowicz v. Yarnick, 290 A.D.2d 922	307A-517.1	We also find no merit in defendant's contention that plaintiffs' motion should have been denied to discourage forum shopping. Unlike a motion for change of venue which involves the affirmative selection of another forum (see, e.g., Joshiak v. Gates Constr. Corp., 225 A.D.2d 315, 316, 639 N.Y.S.2d 10, a court in granting discontinuance merely makes it possible for the action to be brought elsewhere. Absent compelling circumstances or particular prejudice to defendants, we decline to find that mere discontinuance of this action constitutes an impermissible forum shopping (compare, Du Bray v. Warner Bros. Records, 236 A.D.2d 312, 314, 653 N.Y.S.2d 592 [discontinuance denied where permitting a new action in another state would circumvent an existing New York court order]).	Unlike a motion for change of venue, which involves the affirmative selection of another forum, a court in granting discontinuance merely makes it possible for the action to be brought elsewhere.	"Unlike a motion for change of venue, which involves the affirmative selection of another forum, does a court in granting discontinuance merely make it possible for the action to be brought elsewhere?"	028651.docx	LEGALISE-001338846- LEGALISE-001338847	Condensed, SA	0.75	0	1	0	1		
	Weaver v. Prince George's Cty., 281 Md. 349	371+1001	Although the nature of any tax should be determined by reference to its actual operation and practical effect, rather than by any particular descriptive language which may have been employed by the legislative body, Herman v. M. & C.C. of Baltimore, 189 Md. 191, 196, 55 A.2d 491, 173 A.2d 13, 130 (1947), we are nevertheless cognizant of the rule that the legislature is entitled to considerable weight in its own independent determination. American Nat'l v. M. & C.C. 245 Md. 2, 3, 224 A.2d 883 (1966). Both the State enabling act and the County Ordinance denominate the tax as a "multifamily occupancy" tax. Furthermore, the Ordinance states specifically that the tax is levied "upon rents charged for the use and occupancy of rental multifamily residential units." (emphasis added). The Ordinance also states that the tax is levied "upon the use and occupancy to be paid by a tenant for the use or occupancy of any structure." (emphasis added), and a "rental dwelling unit" is denoted as "any structure . . . which a landlord, for consideration, provides for use as a residence." (emphasis added). Finally, the Ordinance provides that "in the event of a vacancy for a portion of the month the four percent (4%) tax shall be prorated for that portion of the month that the rental unit was vacant." (emphasis added). The Ordinance also states that "there is any indication that the tax was intended as a direct charge on a tenant's possessory estate. Thus, on its face, at least, the tax appears to be a levy on the use and occupancy of a dwelling rather than an assessment directly against any property interest in the tenant's hands.	Though nature of any tax should be determined by reference to its actual operation and practical effect, rather than by any particular descriptive language which may have been employed by legislative body, declaration of the legislature as to character of a levy is entitled to considerable weight in Court of Appeals' own independent determination.	Should the nature of a tax be determined by reference to its actual operation and practical effect rather than by any particular descriptive language?	045125.docx	LEGALISE-001338895- LEGALISE-001338897	SA, Sub	0.8	0	0	1	1		
1001															
	Richman v. Coughlin, 75 S.W.3d 334	307A-517.1	It is well settled in the law that once a plaintiff files a voluntary dismissal of his or her petition, nothing remains before the court upon which it can act, even an order reinstating the case on the trial docket at the plaintiff's request is a nullity. The legal situation is as though the suit had never been brought. No steps can be taken, and any step attempted in the dismissed suit is a nullity.	Once plaintiff files voluntary dismissal of his or her petition, nothing remains before the court upon which it can act, and even an order reinstating the case on the trial docket at plaintiff's request would be null, and even an order reinstating the case on the trial docket at a plaintiff's request would be null?	"Once a plaintiff files voluntary dismissal of his or her petition, does nothing remains before the court upon which it can act, and even an order reinstating the case on the trial docket at a plaintiff's request would be null?"	028437.docx	LEGALISE-00134052- LEGALISE-00134053	SA, Sub	0.25	0	0	1	1		
1002															
1003	Fantony v. Fantony, 21 N.J. 325	221+162	Comity, in a legal sense, is neither a matter of absolute obligation on one nation to recognize the acts of another nation, nor a mere comity of recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience and to the rights of its own citizens or of other persons who are under the protection of its laws. Hilton v. Guyot, 159 U.S. 113, 116 S.Ct. 139, 143, 40 L.Ed. 95 (1895). The Disconto Gesellschaft v. Umbreit, 208 U.S. 570, 28 S.Ct. 337, 340, 52 L.Ed. 625 (1908). Also see 11 Am.Lw., sec. 5, p. 299.	Comity, in legal sense, is neither a matter of absolute obligation on one hand nor of mere courtesy and good will upon the other, but it is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience and to the rights of its own citizens or of other persons who are under the protection of its laws. Hilton v. Guyot, 159 U.S. 113, 116 S.Ct. 139, 143, 40 L.Ed. 95 (1895). The Disconto Gesellschaft v. Umbreit, 208 U.S. 570, 28 S.Ct. 337, 340, 52 L.Ed. 625 (1908). Also see 11 Am.Lw., sec. 5, p. 299.	"What is comity, in a legal sense?"	020272.docx	LEGALISE-00135791- LEGALISE-00135793	Condensed, SA	0.34	0	1	0	1		

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	City of Ashland v. Ashland Salvage, 271 Neb. 362	307A+486	We have held that a party's failure to make a timely and appropriate response to a request for admission constitutes an admission of the subject matter of the request, which matter is conclusively established unless, on motion, the court permits withdrawal of the admission. Schwarz v. Platte Valley Exterminating, 258 Neb. 841, 606 N.W.2d 85 (2000); Wibbelis v. Unick, 229 Neb. 184, 426 N.W.2d 244 (1988). We have recognized that rule 36 is self-enforcing, without the necessity of judicial action to effect an admission which results from a party's failure to answer or object to a request for admission. Id.; Mason State Bank v. Skidmore, 238 Neb. 361, 461 N.W.2d 517 (1990). We have noted, however, that rule 36 is not self-executing. Thus, a party that seeks to claim another party's admission, as a result of that party's failure to respond properly to a request for admission, must prove service of the request for admission and the served party's failure to answer or object to the request and must also offer the request for admission as evidence. Schwarz v. Platte Valley Exterminating, supra; Wibbelis v. Unick, supra. If the necessary foundational requirements are met and no motion is sustained to withdraw an admission, a trial court is obligated to give effect to the provisions of rule 36. Schwarz v. Platte Valley Exterminating, supra. The city followed the indicated procedures in this case.	A party's failure to make a timely and appropriate response to a request for admission constitutes an admission of the subject matter of the request, which matter is conclusively established unless, on motion, the court permits withdrawal of the admission. Discovery Rule 36.	"Does a party's failure to make a timely and appropriate response to a request for admission constitutes an admission of the subject matter of the request, which matter is conclusively established unless, on motion, the court permit withdrawal of the admission?"	029771.docx	LEGALASE-00135073- LEGALASE-00135074	SA, Sub	0.8	839 0	15,344 0	14,873 1	21,876 1	9,079	
	1004														
	Ziegler v. Klein, 590 So. 2d 1066	307A+715	Pursuant to Florida Rule of Civil Procedure 1.460 an oral motion for continuance may be made at trial. A motion for continuance is addressed to the sound judicial discretion of the trial court and absent abuse of that discretion the court's decision will not be reversed on appeal. See Jackson v. State, 464 So.2d 1181 (Fla.1985); Diaz v. Diaz, 258 So.2d 37 (Fla. 3d DCA 1972). However, when undisputed facts reveal that the physical condition of either counsel or client prevents fair and adequate presentation of a case, failure to grant a continuance is reversible error. See e.g. Diaz; (reversible error for court to have denied counsel's request for continuance due to illness and to continue the case and render final judgment of divorce without client or counsel's presence at final hearing); Silverman v. Milner, 514 So.2d 77 (Fla. 3d DCA 1987) (abuse of discretion in denying motion for continuance where defendant suffered a stroke and his testimony was necessary for a fair and adequate presentation of his case). See also Thompson v. General Motors Corp., 439 So.2d 1012 (Fla. 2d DCA 1983).	When undisputed facts reveal that physical condition of either counsel or client prevents fair and adequate presentation of case, failure to grant continuance is reversible error.	"When undisputed facts reveal that physical condition of either counsel or client prevents fair and adequate presentation of a case, failure to grant a continuance reversible error?"	029239.docx	LEGALASE-00135413- LEGALASE-00135414	Continued, SA	0.84	0 1	1 0	0 1	1 1		
	1005														
	Fid.-Phenix Fire Ins. Co. v. Oliver, 25 Tenn. App. 114	307A+716	Where it is shown that defendant's attorney had withdrawn from the case, it is the duty of the court to continue the case a sufficient length of time to permit defendant to employ other counsel or enable such counsel to investigate the case and make defense. 13 C.J. 134, *26; 17 C.J.S., Continuances - 23.	Where it is shown that defendant's attorney has withdrawn from case, it is court's duty to continue case sufficient length of time to permit defendant to employ other counsel and enable such counsel to investigate case and make defense.	"Where it is shown that defendant's attorney has withdrawn from case, is it a court's duty to continue case a sufficient length of time to permit defendant to employ other counsel and enable such counsel to investigate the case and make defense?"	029267.docx	LEGALASE-00135745- LEGALASE-00135746	Continued, SA	0.27	0 1	1 0	0 1	1 1		
	1006														
	Beou v. Beou, 2015-1879 (La. App. 1 Cir. 9/16/16), 203 So. 3d 488	307A+485	Furthermore, the trial court is required to allow the introduction of "all admissible evidence" when an attorney fee is claimed. La. R.S. 13:3738; Gulf Wide Towing, Inc. v. F.E. Wright (U.K.) Ltd., 554 So.2d 1347, 1354 (La.App. 1 Cir.1989). The trial court has wide discretion in determining whether to award attorney's fees based on a party's failure to admit the truth of any matter that is later proved to be genuine. La. Code Civ. Proc. Ann. art. 1472. Matthews, 2015-949 (La.App. 5 Cir. 12/23/15), 186 So.3d 173, 180.	The trial court has wide discretion in determining whether to award attorney's fees based on a party's failure to admit the truth of any matter that is later proved to be genuine. La. Code Civ. Proc. Ann. art. 1472.	Does the trial court has wide discretion in determining whether to award attorney's fees based on a party's failure to admit the truth of any matter that is later proved to be genuine?	029738.docx	LEGALASE-00135721- LEGALASE-00135722	SA, Sub	0.57	0 0	0 0	1 1	1 1		
	1007														
	J.M. Parker & Sons v. William Barber, 208 N.C. App. 682	307A+476	Where one party fails to timely respond to another's request for admissions, the facts in question are deemed to be judicially admitted under Rule 36 of the North Carolina Rules of Civil Procedure. Town of Chapel Hill v. Burchette, 100 N.C.App. 577, 362 S.E.2d 698, 701 (1-1990); see also N.C. Gen.Stat. - 1A-1, Rule 36(d) (2009) ("The matter is deemed to be admitted if the party fails to respond to the request for such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney..."). Rule 36 "means precisely what it says [i.e.,] [i]n order to avoid having requests for admissions deemed admitted, a party must respond within the period of the rule if there is any objection whatsoever to the request." Burchette, 100 N.C.App. at 162, 394 S.E.2d at 701. It is that simple. The plain meaning of the rule is that a party who fails to respond to a request for admissions is deemed to have admitted the facts in question. (b) provides, in pertinent part: (b) Effect of admission. "Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a pretrial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subverted thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment would prejudice the substantial rights of the other party or defense on the merits. N.C.G.S. - 1A-1, Rule 36 (emphasis added).	In order to avoid having requests for admissions deemed admitted, a party must timely respond if there is any objection whatsoever to the request; failure to do so means that the facts in question are judicially established. Rules Civ. Proc., Rule 36(a), West's N.C.G.S.A. § 1A-1.	"In order to avoid having requests for admissions deemed admitted, must a party timely respond if there is any objection whatsoever to the request and failure to do so means that the facts in question are judicially established?"	029748.docx	LEGALASE-00135583- LEGALASE-00135589	Continued, SA	0.83	0 1	1 0	0 1	1 1		
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ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences	
1013	Harris v. Simkin, 322 S.W.2d 950	307A-7216	The mere fact that an attorney withdraws from a case does not give a party an absolute right to a continuance. Annotation, "Continuance/Withdrawal of Counsel," 48 ALR2d 1155, *2. The decision whether to grant or deny a continuance on this ground rests largely in the discretion of the trial court, and although that discretion is judicial in nature and renewable on appeal, every intent/direction is in favor of the court's ruling. <i>Savings Finance Corp. v. Blair</i> , Mo.App., 280 S.W.2d 675, 676 (1955). Whether there has been an abuse of discretion on the part of the court in directing that a trial proceed in the absence of an attorney for a party depends upon the particular facts and circumstances in the given case. <i>Brown v. Stroeter</i> , supra. According to the assignment judge's statement, which we accept, Simkin had employed a series of lawyers in this case for the purpose of procuring continuances by the withdrawal of lawyers as the case was reached on the trial docket. Simkin had employed the same dilatory tactics in another case before the same judge. We have had a similar experience. After the case reached this court Simkin's Attorney X filed two motions for additional time to file a transcript on appeal. Attorney Y then filed a motion to withdraw on the ground that he was unable to prepare the transcript. The court granted the motion. Insufficient funds. Attorney Y then upon entered his appearance for Simkin and filed a third motion for additional time to file a transcript. Attorney Y then filed a motion to withdraw on the ground that Simkin had not made financial arrangements for Y's fee. Simkin, appearing pro se, made an application for additional time to prepare and file a brief. When we denied this, present counsel for Simkin entered his appearance. Two different successive lawyers in the trial court; three different successive lawyers in the appellate court. Four withdrawals of counsel. At least three for the purpose of procuring continuances. At least two for the purpose of procuring continuances. The legislative continuance statute allows parties represented by attorneys who are members of the state legislature to obtain continuances under certain circumstances. See <i>Tex. Civ. Prac. & Rem. Code Ann.</i> , § 30.003. To obtain a continuance, the legislator must present an affidavit to the adjudicating tribunal stating he or she intends to participate actively in the case and has not taken the case for purposes of delay. 30.003(d). (6). The tribunal must grant the continuance unless the party employed the legislator within ten days of trial on the merits or unless a continuance would interfere with a party's due process rights. 30.003(b). (3). <i>Walters v. Sondock</i> , 561 S.W.2d 772, 776 (Tex. 1977). Under those circumstances, the tribunal has the discretion to deny a continuance. 30.003(b). (6). <i>Walters</i> , 561 S.W.2d at 776.	Whether there has been an abuse of discretion on part of court in directing that a trial proceed in absence of an attorney for party depends upon particular facts and circumstances in a given case.	Does the question of whether there has been an abuse of discretion on part of court in directing that a trial proceed in absence of an attorney for party depend upon particular facts and circumstances in a given case?	023553.docx	LEGALASE-00136393-LEGALASE-00136391	Condensed, SA	0.94	839 0	1	15,344 0	14,873 0	21,876 1	9,029
	First Interstate Bank of Texas, N.A. v. Burns, 951 S.W.2d 237	307A-7216	The legislative continuance statute allows parties represented by attorneys who are members of the state legislature to obtain continuances under certain circumstances. See <i>Tex. Civ. Prac. & Rem. Code Ann.</i> , § 30.003. To obtain a continuance, the legislator must present an affidavit to the adjudicating tribunal stating he or she intends to participate actively in the case and has not taken the case for purposes of delay. 30.003(d). (6). The tribunal must grant the continuance unless the party employed the legislator within ten days of trial on the merits or unless a continuance would interfere with a party's due process rights. 30.003(b). (3). <i>Walters v. Sondock</i> , 561 S.W.2d 772, 776 (Tex. 1977). Under those circumstances, the tribunal has the discretion to deny a continuance. 30.003(b). (6). <i>Walters</i> , 561 S.W.2d at 776.	Tribunal must grant legislative continuance unless party employed legislator-attorney within ten days of trial on the merits or unless continuance would interfere with any party's due process rights; under those circumstances, tribunal has discretion to deny continuance. V.T.C.A., Civil Practice & Remedies Code § 30.003(b). (3).	Should a tribunal grant legislative continuance unless party employed legislator-attorney within ten days of trial on the merits or unless continuance would interfere with any party's due process rights?	023493.docx	LEGALASE-00136595-LEGALASE-00136596	SA, Sub	0.6	0 0	0	1	1		
1015	Lucas v. Clark, 347 S.W.2d 800	307A-4483	The Appellees rely solely on Request for Admission 2, which was embedded in their petition, to prove that they suffered \$10 million dollars of unliquidated damages in the form of lost profits. Request for Admission 2 stated: "As a proximate result of your breaching the contract made the basis of this suit, the Plaintiffs have suffered consequential damages in an amount not less than ten million dollars." Generally, when a party fails to respond to a request for admission, either by timely answer, written objection, or motion to file late answers, the facts contained in the request are deemed admitted. <i>Oliphant Fin., LLC v. Gibraltar</i> , 299 S.W.3d 829, 838 (Tex.App. Dallas, 2009; no pet.); <i>Sherman Acquisition II LP v. Garcia</i> , 229 S.W.3d 802, 812 (Tex.App. Waco 2007; no pet.). Admissions, once deemed admitted, are judicial admissions and may not be contradicted. <i>Oliphant Fin.</i> , 299 S.W.3d at 837; <i>Sherman Acquisition</i> , 229 S.W.3d at 812-13. As all of Lucas's points on appeal are impacted by whether or not Request for Admission 2, standing alone, can support the trial court's \$10 million default judgment, we will begin by addressing the purpose behind requests for admissions.	Generally, when a party fails to respond to a request for admission, either by timely answer, written objection, or motion to file late answers, the facts contained in the request are deemed admitted.	Generally, when a party fails to respond to a request for admission, either by timely answer, written objection, or motion to file late answers, are the facts contained in the request deemed admitted?	023653.docx	LEGALASE-00136862-LEGALASE-00136863	Condensed, SA	0.83	0 0	1	0	1		
	Bray v. Miller, 397 S.W.2d 103	307A-723.1	In reviewing the trial court's action in overruling the first motion for continuance we are governed by well established rules. All courts are said to have an inherent power to grant or refuse continuances. <i>East Texas Land & Improvement Co. v. Texas Lumber Co.</i> , 21 Tex.Civ.App. 41, 52 S.W. 645, err. <i>ref.</i> Rules relating to continuances merely prescribe certain requisites of the application. Accordingly, if an application for continuance does not conform to the provisions of a statute or rule regulating same the granting of relief is within the sound discretion of the court. 13 Tex. Civ. App. 132, 52 S.W. 645, err. <i>ref.</i> It is demonstrated that the rule has not been complied with it will be presumed, in the absence of a showing to the contrary, that the court has not abused its discretion. 13 Tex. Civ. App. 132, 52 S.W. 645, err. <i>ref.</i> <i>Brooks</i> , 63 Tex. Civ. App. 231, 132 S.W. 95, err. <i>ref.</i> ; <i>Jinks v. Jinks</i> , 205 S.W.2d 816; <i>Mater Finance Co. v. Allen</i> , Tex. Civ. App., 252 S.W.2d 1022; <i>Chandler v. Brown</i> , Tex. Civ. App., 301 S.W.2d 720.	Rules relating to continuances merely prescribe certain requisites of application and if an application for continuance does not conform to provisions of statute or rule regulating such application, granting of relief is within sound discretion of court. Rules of Civil Procedure, rules 25 L, 252.	"Do rules relating to continuances merely prescribe certain requisites of the application and is the granting of relief within the sound discretion of court, if an application for continuance does not conform to the provisions of a statute or rule regulating such application?"	030241.docx	LEGALASE-00136792-LEGALASE-00136793	Condensed, SA	0.72	0 0	1	0	1		
1016															

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1017	Matter of Safire, 112 N.C. App. 747	307A+725	Generally, the denial of a continuance, which is within the trial court's discretion, will not be reversed on appeal, but will be reversed if the trial court abused its discretion. Freeman v. Monroe, 92 N.C.App. 99, 101, 373 S.E.2d 443, 444 (1988). Before ruling on a motion for a continuance, the judge should hear the evidence, pro and con, consider it judicially, along with whether the moving party has acted with diligence and in good faith and then rule with a view to promoting substantial justice. Shankle v. Shankle, 289 N.C. 473, 483, 223 S.E.2d 380, 386 (1976). N.C.Gen.Stat. § 7A-602 directly addresses the issue of continuances for a hearing and provides that the court should consider the evidence, reports, or assessments that the court has requested, or other information needed in the best interest of the juvenile and to allow for a reasonable time for the parties to conduct expeditious discovery. Otherwise, continuances shall be granted only in extraordinary circumstances when necessary for the proper administration of justice or in the best interest of the juvenile. N.C.G.S. § 7A-634 (1989).	Before ruling on motion for continuance, judge should hear the evidence, pro and con, consider it judicially, along with whether moving party has acted with diligence and in good faith and then rule with a view to promoting substantial justice.	"Before ruling on a motion to continue, should a judge hear the evidence pro and con, consider it judicially with a view to promoting substantial justice?"	Pretrial Procedure - Memo 4.390 - C- ES.docx	R055-00304594-R055-003304695	Condensed, SA	0.61	839	1	15,344	21,876	9,079
1018	Trummel v. Mitchell, 156 Wash. 2d 653	307A+725	Trummel next contends that the trial court abused its discretion in failing to grant a continuance of the April 19, 2001, hearing. Trummel claims that he was entitled to a continuance under the factors set forth in Ballard v. Demoreto, 10 Wash.App. 715, 720, 519 P.2d 994 (1974). Whether a motion for continuance should be granted or denied is a discretionary matter for the trial court. The court has discretion to manifest abuse of discretion. Id. In exercising its discretion, a court may properly consider the necessity of reasonably prompt disposition of the litigation; the needs of the moving party; the possible prejudice to the adverse party; the prior history of the litigation, including prior continuances granted the moving party; any conditions imposed in the prior continuances; and any other matters that bear on the material bearing upon the exercise of the discretion.	In exercising its discretion whether to grant a continuance, a court may properly consider the necessity of reasonably prompt disposition of the litigation, the needs of the moving party, the possible prejudice to the adverse party, the prior history of the litigation, including prior continuances granted the moving party, any conditions imposed in the prior continuances, and any other matters that bear on the material bearing upon the exercise of the discretion.	What should a court consider in exercising its discretion whether to grant a continuance?	Pretrial Procedure - Memo 4.785 - C- ES.docx	R055-003318735-R055-003318736	SA, Sub	0.59	0	0	1	1	1
1019	Friedman v. Heart Int'l of Port St. Lucie, 863 So. 2d 186	307A+36.1	Certainly, the substance of the Florida Rules of Civil Procedure, buttressed by litigation protecting case law, strikes the proper balance between the interests of the parties and the interests of the public and equitable interests. While the general rule in Florida is that personal financial information is ordinarily discoverable only in aid of execution after judgment has been entered, see Guman v. Bankers Trust Co., 379 So.2d 658, 659 (Fla. 3d DCA 1980). Cooper v. Fulton, 117 So.2d 33, 35-36 (Fla. 3d DCA 1960), where materials sought by a party "would appear to be relevant to the subject matter of the pending action," the information is fully discoverable. Epstein v. Epstein, 519 So.2d 1042, 1043 (Fla. 3d DCA 1988). A party's finances, if relevant to the disputed issues in the litigation, are discoverable. The court has discretion to grant discovery and courts will compel production of personal financial documents and information if shown to be relevant by the requesting party. See Id.; Jacobs v. Jacobs, 50 So.2d 169, 173 (Fla.1951); Florida Gaming Corp. of Delaware v. American Jai-Alai, Inc., 673 So.2d 523, 524 (Fla. 4th DCA 1996) ("[T]he financial information at issue was relevant to the calculation of damages under the breach of contract court. Discovery of these matters was proper."); Citibank, N.A. v. Papinger, 461 So.2d 241, 242 (Fla. 1st DCA 1985); Ashcraft v. Harvey, 319 So.2d 530, 531 (Fla. 4th DCA 1975).	While the general rule is that personal financial information is ordinarily discoverable only in aid of execution after judgment has been entered, the information sought by a party would appear to be relevant to the subject matter of the pending action, the information is fully discoverable.	"Where financial materials sought by a party would appear to be relevant to the subject matter of the pending action, is the information fully discoverable?"	Pretrial Procedure - Memo 4.540 - C- No.docx	R055-003304624-R055-003304625	Condensed, SA	0.8	0	1	0	1	1
1020	Wingardner v. Vreger, 122 S.W. 925	307A+74	We overrule the forty-third assignment of error, which also complains of the action of the court in refusing to quash the depositions of these witnesses. It is insisted that the certificate must show that the witnesses were first cautioned and sworn to testify to the truth, etc. That provision is not made a condition precedent to the taking of depositions, and it was not intended to apply where their answers are taken by written interrogatories propounded under the general statute.	The certificate of the officer taking depositions on written interrogatories propounded under the general statute need not show that the witnesses were first cautioned and sworn to testify to the truth; the statute relating thereto applying only to depositions taken under oral examination.	Does the certificate of the officer taking depositions on written interrogatories propounded under the general statute need not show that the witnesses were first cautioned and sworn to testify to the truth?	031801.docx	LEGAEASE-00138266-LEGAEASE-00138267	Condensed, SA, Sub	0.41	0	1	1	1	1
1021	Deselles v. Mossy Motors, 442 F. Supp. 897	89+473	Louisiana law is that when a creditor (plaintiff) settles with and grants a remission as to one of two solidary obligors (defendants) the creditor thereafter can claim only one-half the debt from the obligor who has not been released. See, e.g., Dinkley v. Maher, 14 La. 4, 695, 177 So.2d 412, 423. Accordingly, I believe that the only correct and fair conclusion in the present situation is to cast the remaining defendant Mossy in judgment for one-half of the statutory penalty in the sum of \$500.	Under Louisiana law, when creditor settles with advance remission as to one of two solidary obligors, creditors thereafter can claim only one-half of the debt from obligor who has not been released. Whether obligation be one arising in contract or tort, LA-C.C. art. 2205.	"When a creditor settles with and grants a remission as to one of two solidary obligors, can the creditor thereafter claim one-half the debt from the obligor who has not been released whether the obligation be one arising in contract or tort?"	Subrogation - Memo # 1229 - C - NE.docx	R055-003032194-R055-003302195	SA, Sub	0.52	0	0	1	1	1
1022	City of Evanston v. Portnow, 422, 2011, 2d 512	308+1202	Agency may be established and its nature and extent shown by parol evidence, whether direct or circumstantial, and reference may be had to the circumstances germane to the question, and if the evidence shows one acting for another under circumstances implying knowledge on the part of the supposed principal of such acts, a prima facie case of agency is established. E.g., Webb v. Marches, 24 Ill.App.2d 75, 163 N.E.2d 727; Newco Landmont Co. v. A.L. D., Inc., 16 Ill.App.2d 494, 148 N.E.2d 820.	Agency may be established and its nature and extent shown by parol evidence, whether direct or circumstantial, and reference may be had to the circumstances germane to the question and if the evidence shows one acting for another under circumstances implying knowledge on the part of the supposed principal of such acts, a prima facie case of agency is established.	How is the nature and extent of agency shown by parol evidence?	Principal and Agent - Memo 104 - GP.docx	R055-00303102-R055-003303103	Condensed, SA	0.24	0	1	0	1	1

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	United States v. Holmes, 618 F. Supp. 2d 529	34+36	The Court finds this distinction to be of no consequence. A federal district court precluded from jurisdiction over a criminal prosecution simply because the Uniform Code of Military Justice gives jurisdiction to military courts over the defendant is not a jurisdictional bar to a federal court's jurisdiction over the crime. The crime was committed on military installations. Walker, 552 F.2d 566, 567 '88 (4th Cir. 1977) (addressing defendant's argument that the portion of the military code prohibiting drunk driving thereby protects a servicemember from prosecution under a similar federal offense). "[f]ederal courts have, at the very least concurrent jurisdiction with military courts over violations of the laws of the United States by military personnel whether on or off military reservations." 51 L.Ed. 1084 (1987b). "[S]imply because a member of the armed forces may be punished by military court martial for an offense provides no justification for concluding that a District Court lacks jurisdiction to punish him for the same offense, if such offense is violative of a federal law." Walker, 552 F.2d at 567.	A federal district court is not precluded from jurisdiction over a criminal prosecution simply because the Uniform Code of Military Justice gives jurisdiction to military courts over the defendant. The crime was committed on military installations.	Is a federal district court precluded from jurisdiction simply because the Uniform Code of Military Justice gives jurisdiction to military courts over the defendant? The crime was committed on military installations?	LEGALISE-0014149-9 LEGALISE-0014160	SA, Sub	0.78	839 0	15,344 0	14,873 1	21,876 1	9,079
1023													
1024	State ex rel. GMS Mfg. Co. v. Callahan, 65 Ohio App. 3d 335	307A-723.1	Concerning the defendant's motion for a continuance, the court first notes that the statute does not give the trial court any discretion in deciding whether a bond must be posted when the continuance is for more than eight days. Under the applicable language, the posting of the bond is a prerequisite to the granting of such a continuance. In this respect, the present statute is similar to the preceding version of R.C. 3923.08.	Statute providing for continuance in forcible entry and detainer actions does not give trial court any discretion in deciding whether bond must be posted when continuance requested by defendant is for more than eight days; pursuant to statute, posting of bond is prerequisite to granting of such a continuance. R.C. § 1923.08.	Does the statute providing for a continuance in forcible entry and detainer actions give a trial court any discretion in deciding whether a bond must be posted when continuance requested by the defendant is for more than eight days?	LEGALISE-0014131-6 LEGALISE-0014131-7	SA, Sub	0.24	0 0	0 0	1 1	1 1	
1025	Headline Materials International Underwriters Ins. Co., 704 F.3d 558	366-35	Of course, parties sometimes use the terms "subrogation" and "indemnification" interchangeably. The effect of subrogation waiver clauses of these terms, in determining the effect of subrogation waiver clauses upon indemnification provisions, the court must "rely on the plain and ordinary meaning of the words in the contract and "consider the document as a whole." Nodaway Valley Bank v. E.L. Crawford Const., Inc., 126 S.W.3d 820, 825 (Mo.Ct.App.2004) (quoting SD Invs., Inc. v. Michler P'aul, L.L.C., 90 S.W.3d 75, 81 (Mo.Ct.App.2002)). "It is preferable to attribute a reasonable meaning to each clause and harmonize all provisions so that each clause achieves some provisions non-functional or nonessential." Id. at 827.	Under Missouri law, in determining the effect of subrogation waiver clauses upon indemnification provisions, the court must "rely on the plain and ordinary meaning of the words in the contract and consider the document as a whole. It is preferable to attribute a reasonable meaning to each clause and harmonize all provisions non-functional or nonessential.	Should a court rely on the plain and ordinary meaning of the words in the contract and consider the document as a whole in determining the effect of subrogation waiver clauses upon indemnification provisions?	LEGALISE-0014093-3 LEGALISE-0014093-4	SA, Sub	0.45	0 0	0 0	1 1	1 1	
1026	Buckstariff Bath House Co. v. McKinley, 198 Ark. 91	371+251	In its original sense, an excise was something cut off from the price paid on a sale of goods, a contribution to the support of the government. It is not a burden laid directly upon persons or property every form of charge imposed by public authority for the purpose of raising revenue to defray the cost of the exercise of a privilege, or the enjoyment of a privilege, or the enjoyment of an occupation.	An "excise," in its original sense, was something cut off from the price paid on a sale of goods, a contribution to the support of the government. It is not a burden laid directly upon persons or property every form of charge imposed by public authority for the purpose of raising revenue to defray the cost of the exercise of a privilege, or the enjoyment of a privilege, or the enjoyment of an occupation.	Does excise include every form of taxation which is not a burden laid directly upon persons or property, in its broader meaning?	LEGALISE-0014087-1 LEGALISE-0014087-2	Condensed SA	0.39	0 1	1 0	1 0	1 1	
1027	W.S. Butterfield Theatres v. Dep't of Revenue, 353 Mich. 345	371+362.1	The principles here involved were well expressed by the Supreme Court of the United States in State Board of Tax Commissioners of Indiana v. Jackson, 283 U.S. 527, 515 S.Ct. 540, 543, 75 L.Ed. 1248, wherein it was held, in upholding the constitutionality of a chainstore tax: "The principles which govern the decision of this cause are well settled. The power of taxation is fundamental to the very existence of the government and is one of the most comprehensive and essential of its powers. It is the iron rule of equal protection of the law does not compel the adoption of an iron rule of equal taxation, nor prevent variety or differences in taxation, or discretion in the selection of subjects, or the classification for taxation of properties, businesses, trades, callings, or occupations. Bell's Gap R. Co. v. Pennsylvania, 134 U.S. 232, 10 S.Ct. 533, 33 L.Ed. 892; Southwestern Oil Co. v. Texas, 217 U.S. 114, 30 S.Ct. 466, 54 L.Ed. 688; Brown-Homan Co. v. Kentucky, 217 U.S. 563, 30 S.Ct. 578, 54 L.Ed. 883.	Restriction that power of taxation shall not be so exercised as to deny to any the equal protection of the laws does not compel adoption of an iron rule of equal taxation, nor prevent variety or differences in taxation, or discretion in selection of subject, or classification for taxation of property, businesses, trades, callings, or occupations.	Does the restriction that the power of taxation shall not be so exercised as to deny to any the equal protection of the laws prevent differences in taxation?	LEGALISE-00141103- LEGALISE-00141104	Condensed SA, Sub	0.66	0 1	1 1	1 1	1 1	1 1
1028	Tennessee Gas Pipeline Co. v. Marx, 594 So. 2d 615	371+2005	This test is to prevent taxation of an entity that does not benefit from services provided by the taxing state. Goldberg v. Sweet, 488 U.S. at 266-67, 109 S.Ct. at 591-92. The interstate taxpayer may be required to contribute not only to the cost of the services performed by the state on account of the particular transaction which forms the basis for the tax, but for all governmental services including those from which the taxpayer arguably receives no direct benefit. Id. at 267, 109 S.Ct. at 592. In D.H. Holmes v. McNamara, 486 U.S. at 32, 108 S.Ct. at 1624, the court found that the receipt of police and fire protection, use of public roads and mass transit, and the other advantages of civilized society satisfied this test.	Interstate taxpayer may be required to contribute not only to cost of services performed by state on account of particular transaction which forms basis for tax, but for all governmental services including those from which the taxpayer arguably receives no direct benefit. U.S.C.A. Const. Art. 1, § 8, cl. 3; Amend. 5, § 14.	Is an interstate taxpayer required to contribute to cost of services performed by state on account of particularly transaction which forms basis for tax?	LEGALISE-0014099-5 LEGALISE-0014099-6	Condensed SA, Sub	0.57	0 1	1 1	1 1	1 1	1 1
1029	In re Turner, 139 F.231	34+36	So that, both by reason and the highest authority of the land, a hold that an officer of the United States army, in the discharge of his duty, acting in obedience to orders of the secretary of war, who in turn is executing an act of congress, is not subject to arrest on a warrant or order of a state court, and that such arrest is wholly illegal, and it follows that Major Turner is discharged from custody and detention.	An officer of the United States army acting in the discharge of his duty, in obedience to orders of the secretary of war, who in turn is executing an act of congress, is not subject to arrest on a warrant or order of a state court.	"Is an officer of the United States army who is acting in the discharge of his duty, in obedience to orders of the secretary of war, who in turn is executing an act of congress, is not subject to arrest on a warrant or order of a state court?"	LEGALISE-0014226-2 LEGALISE-0014226-3	Condensed SA	0.46	0 1	1 0	1 0	1 1	

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100	Nat. Gas Pipeline Co. of Am. v. Poek, 30 SW 3d 618	260s+115	When a lessee of mineral rights enters the land after termination of a lease and without consent of the lessor, he is liable for injury resulting from that unlawful entry. Byrom v. Kendley, 717 S.W.2d 602, 605 (Tex.1986). By definition, if the entry is permissive, then there is no liability for injury resulting from that entry. The plaintiff may not make the entry onto the mineral lease permissive. See Jaded Petroleum Corp. v. Eagle Oil & Gas Co., 693 S.W.2d 99, 109 (Tex.App. Fort Worth 1985, writ ref'd n.r.e.). Good faith, as it applies to a trespasser under a mineral lease is not determined by whether the entry is permissive, but by the belief of the one who enters that he had the right to enter and develop the minerals under the lease and the damages for which a good faith trespasser's liability is limited to the value of the minerals removed, less drilling and operating costs. See Jaded Petroleum Corp. v. Eagle Oil & Gas Co., 693 S.W.2d 99, 139 (Tex.App. Corpus Christi 1990, writ denied).	Good faith, as it applies to a trespasser under a mineral lease, is not determined by whether the entry is permissive, but by the belief of the one who enters that he had the right to enter and develop the minerals under the lease, and the damages for which a good faith trespasser is liable are limited to the value of the minerals removed, less drilling and operating costs.	Is a good faith trespasser liable in damages only for the value of the minerals removed less drilling and operating costs?	Mines and Minerals - Memo #214 - C - GSS.docx	ROSS-00329.092-ROSS-00329.1093		Condensed, SA	0.62	0	1	0	21,876	9,029
101	Potrat v. St. Paul Mercury Ins. Co., 277 Mont. 117	307A+554	When deciding a motion to dismiss based on lack of subject matter jurisdiction, a district court must determine whether the complaint states facts that, if true, would vest the district court with subject matter jurisdiction. This conclusion is a question of law, and we will review to determine whether the District Court's interpretation of the law is correct. Barthule, 886 P.2d at 975 (citing In re Marriage of Barnard (1994), 264 Mont. 103, 870 P.2d 93).	When deciding motion to dismiss based on lack of subject matter jurisdiction, district court must determine whether complaint states facts that, if true, would vest district court with subject matter jurisdiction.	"When deciding a motion to dismiss based on lack of subject matter jurisdiction, must a trial court determine whether the complaint states facts that would vest the court with subject matter jurisdiction?"	033443.docx	LEGALEASE-00143973-LEGALEASE-00143974	Condensed, SA	0.64	0	1	0	1	1	
102	Verbaigh v. Gagliano, 396 Ill. App. 3d 1041	307A+650	As noted by this supreme court, "[d]ismissal of a cause with prejudice is a length which denies a defendant "their opportunity to investigate the circumstances upon which liability against the defendant is predicated while the facts are accessible." * * * Segal, 136 Ill.2d at 288, 144 Ill.Doc. 360, 555 N.E.2d at 721, quoting Geneva Construction Co. v. Martin Transfer & Storage Co., 4 Ill.2d 273, 289*90, 122 N.E.2d 540, 549 (1954). The trial court's determination of a plaintiff's lack of diligence is an objective test and a defendant's inquiry and actions are not relevant. * * * Moore, 365 Ill. App.3d 1039, 1042, 303 Ill.Doc. 385, 853 N.E.2d 775 (2006).	Dismissal of a cause with prejudice under Supreme Court rule allowing a plaintiff to file a motion to set aside a judgment of dismissal is procedurally deficient is justified when the delay in service is of a length which denies a defendant a fair opportunity to investigate the circumstances upon which liability against the defendant is predicated while the facts are accessible. Sup Ct.Rules, Rule 103(b).	Is dismissal of a cause with prejudice under Supreme Court rule 103(b) a denial of due diligence in obtaining service of process a harsh penalty?	Pretial Procedure - Memo #435 - C - DHA.docx	ROSS-003304849	Order, SA, Sub	0.49	1	0	1	1	1	
103	Mercantile Capital, LP v. Fed. Transit, 193 F. Supp. 2d 1243	1708+2791	The plaintiff bears the initial burden of alleging personal jurisdiction by pleading sufficient material facts to establish the basis for exercise of such jurisdiction. Future Technology Today, Inc. v. Q3F Healthcare Services, Inc., 2003 WL 100100 (D. Minn. 10/1/03). The plaintiff has the burden to establish to the defendant to make a prima facie case of personal jurisdiction. If the plaintiff fails to do so, the court may grant summary judgment in favor of the defendant. If, however, by affidavits or otherwise, that personal jurisdiction is not present, id. If the defendant sustains that responsibility, the plaintiff is then required to substantiate the jurisdictional allegations in the complaint by affidavits or other competent proof, and he may not merely reiterate the factual allegations in the complaint. If, however, the allegations in the complaint still must be taken as true to the extent they establish personal jurisdiction, the court may grant summary judgment in favor of the plaintiff. Republic of Yemen, 218 F.3d 1292, 1303 (11th Cir. 2000). And if the parties present conflicting evidence, all factual disputes are resolved in the plaintiff's favor, and the plaintiff's prima facie showing will be sufficient to survive the motion to dismiss notwithstanding the contrary presentation by the moving party. Id.	If plaintiff sustains initial burden of alleging personal jurisdiction, burden shifts to defendant to make prima facie evidentiary showing; by affidavits or otherwise, that personal jurisdiction is not present; if defendant sustains that responsibility, the plaintiff is then required to substantiate jurisdictional allegations in complaint by affidavits or other competent proof, and may not merely reiterate factual allegations in complaint. Fed Rules Civ Proc. Rule 12(b)(2), 28 U.S.C.A.	"On a motion to dismiss for want of personal jurisdiction, is the plaintiff required to substantiate the jurisdictional allegations in the complaint by affidavits or other competent proof?"	033745.docx	LEGALEASE-00143570-LEGALEASE-00143571	SA, Sub	0.59	0	0	1	1	1	
104	Carzo v. Town of Orange, 315 Conn. 606	307A+685	"In contrast, if the complaint is supplemented by undisputed facts established by affidavits submitted in support of the motion to dismiss... and/or public records of which judicial notice may be taken... the trial court, in determining the jurisdictional issue, may consider these supplementary undisputed facts and need not conclusively presume the validity of the allegations of the complaint. Further, those allegations are tempered by the right to rely on evidence submitted in support of a defendant's motion to dismiss conclusively establish that jurisdiction is lacking, and the plaintiff fails to undermine this conclusion with counter affidavits... or other evidence, the trial court may dismiss the action without further proceedings...if, however, the defendant submits either no proof to rebut the plaintiff's jurisdictional allegations... or only evidence that fails to call those allegations into question, the plaintiff may not support counter affidavits or other evidence to support the complaint, but may rest on the jurisdictional allegations therein..."	If affidavits and/or other evidence submitted in support of a defendant's motion to dismiss conclusively establish that jurisdiction is lacking, and the plaintiff fails to undermine this conclusion with counter affidavits or other evidence, the trial court may dismiss the action without further proceedings? If, however, the defendant submits either no proof to rebut the plaintiff's jurisdictional allegations, or only evidence that fails to call those allegations into question, the plaintiff need not support counter affidavits or other evidence to support the complaint, but may rest on the jurisdictional allegations therein. Benett Practice Book 1998, § 10-30.	"If affidavits and/or other evidence conclusively establish that jurisdiction is lacking, may the trial court dismiss the action without further proceedings?"	033830.docx	LEGALEASE-00142758-LEGALEASE-00142759	SA, Sub	0.45	0	0	1	1	1	
105	Welsh v. Hosp. Corp. of Utah, 2010 UT App 171	307A+44.1	The willfulness standard in this context is low. Willfulness has been interpreted to mean "any intentional failure to distinguish from ordinary noncompliance. No Utah cases have been cited to establish that a trial court need not specifically state that willfulness, bad faith, or persistent dilatory tactics are present to impose sanctions under rule 37(b)(2). See Preston & Chambers, PC v. Keller, 943 P.2d 260, 263 (Utah Ct.App.1997) (affirming sanctions for dilatory tactics where the trial court did not specifically articulate a finding that dilatory tactics were present but where findings supporting that conclusion were located in the court's opinion or elsewhere to sufficiently indicate the factual basis for the ultimate conclusion." Id. Here, however, we need not resolve the question of willfulness, because whether the Welshes' noncompliance was voluntary or not, we conclude that the trial court abused its discretion in its "choice of an appropriate discovery sanction." See	A trial court need not specifically state that willfulness, bad faith, or persistent dilatory tactics are present to impose sanctions for discovery violations or noncompliance with a court's scheduling order. Rules Civ Proc., Rules 16(b)(2), 37(b)(2).	"Need a trial court not specifically state that willfulness, bad faith, or persistent dilatory tactics are present to impose sanctions for discovery violations or noncompliance with a court's scheduling order?"	Pretial Procedure - Memo #435 - C - AD.docx	ROSS-00318370-ROSS-00318371	Condensed, SA, Sub	0.78	0	1	1	1	1	

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1086	Madera Production Co. v. Churchill Co., 307 S.W.3d 652	401+5.1	On first blush, the venue statute related to land would appear to apply to recovery of real property or damages to real property. However, the statute is limited to recovery of real property, and the recovery is then to action ultimately seeking title or fee clear title to real property. Madera amended its pleading in an effort to exclude any issues of title or ownership to real property; however, the underlying issue that Madera must prove to show its entitlement to damages involves proof of ownership right in a mineral lease, which in Texas is well established as real property. Whether the recovery is called to be one for conversion, breach of contract, or other normal property types of recovery, the true nature of the claim is that Madera is seeking recovery of its property rights asserted, and the relief sought, not on the terms used to describe the cause of action. Delese v. Albertson's, Inc., 83 S.W.3d 827 (Tex.App., Texarkana 2002, no pet.).	Action to recover contract damages was ultimately dependent upon proof of ownership rights in a mineral lease, and thus the only proper venue was the county in which the mineral lease was located. Is the party seeking contract damages amended its pleading to exclude real property issues such as title and ownership, but the issue of contract damages required determination of ownership rights in the mineral lease and the Civil Practice and Remedies Code provided that actions on real property interests could only be filed where the relevant land was located. VT C.A., Civil Practice & Remedies Code §§ 15.002(a), 15.004, 15.013; Vernon's Admin. Laws Rules Civ. Proc., Rule 87.	"If an action to recover contract damages is ultimately dependent upon proof of ownership rights in a mineral lease, is the party seeking contract damages amended its pleading to exclude real property issues such as title and ownership, but the issue of contract damages required determination of ownership rights in the mineral lease and the Civil Practice and Remedies Code provided that actions on real property interests could only be filed where the relevant land was located?"	04528.docx	LEGALISE-0014349-LEGALISE-0014350	Condensed, SA, Sub	0.29	889	15,344	14,873	21,876	9,079
1087	Admiral Moring v. Cooper, 357 Md. 533	307A+46	Admiral cites a number of cases in which this Court and the Court of Special Appeals have affirmed trial court decisions precluding the defendant from introducing evidence of its own negligence in response to requests. What follows, however, is the governing principle that the appropriate sanction for a discovery or scheduling order violation is largely discretionary with the trial court, and that the more draconian sanctions, of dismissing a claim or precluding the evidence necessary to support a claim, are normally reserved for persistent and deliberate violations that actually cause some prejudice, either to party or to court.	Appropriate sanction for discovery or scheduling order violation is largely discretionary with the trial court, and the more draconian sanctions, of dismissing a claim or precluding the evidence necessary to support a claim, are normally reserved for persistent and deliberate violations that actually cause some prejudice, either to party or to court.	Is the appropriate sanction for a discovery or scheduling order violation largely discretionary with the trial court?	Pretrial Procedure - Memo # 6145 - C-AR.docx	ROSS-003316591-ROSS-003316593-ROSS-003316595-ROSS-003316599	Condensed, SA	0.75	0	1	0	1	1
1088	Christen v. Lincoln Auto. Co., 403 Ill. App. 3d 1038	313+63	Rule 103(b) does not set forth a specific time in which a defendant must be served; rather, it requires a plaintiff to exercise reasonable diligence to provide service in a timely manner. Kote, 325 Ill.App.3d at 949-19, 259 Ill.Dec. 649, 759 N.E.2d at 133. "The rule was adopted to facilitate the prompt service of process on defendants, and it is not intended to require a plaintiff to exercise due diligence to protect a defendant from unnecessary delay in the service of process and to prevent the plaintiff from circumventing the applicable statute of limitations by filing suit before the expiration of the limitations period but taking no action to have defendants served until the plaintiff is ready to proceed with the litigation. Kote, 325 Ill.App.3d at 949, 759 N.E.2d at 133. The rule's further purpose is to promote the expeditious handling of suits by giving trial courts the discretion to dismiss a claim or preclude the evidence necessary to support a claim if a plaintiff fails to exercise reasonable diligence. Breznicki v. Vohra, 258 Ill.App.3d 702, 197 Ill.Dec. 342, 631 N.E.2d 945, 347 (1994). Notwithstanding these generalizations, dismissal of a cause with prejudice under Rule 103(b) is considered a harsh penalty. Breznicki, 258 Ill.App.3d at 705-06, 197 Ill.Dec. 342, 631 N.E.2d at 348.	A further purpose of rule requiring a plaintiff to exercise reasonable diligence to obtain service on a defendant is to promote the expeditious handling of suits by giving trial courts wide latitude to dismiss when service is not effected with reasonable diligence. Sup Ct Rules, Rule 103(b).	Is a further purpose of rule requiring a plaintiff to exercise reasonable diligence to obtain service on a defendant to promote the expeditious handling of suits by giving trial courts wide latitude to dismiss when service is not effected with reasonable diligence?	Pretrial Procedure - Memo # 6171 - C-BMM.docx	ROSS-00289795-ROSS-00289796	Condensed, SA, Sub	0.78	0	1	1	1	1
1089	Jensen v. Lithwa, 13 Md. App. 168	307A+309	Rule VIII of the Uniform Rules of Practice of the Superior Court (R. 17, A.R.S., Pocket Supp.) requires the trial judge to "make such order as he deems appropriate" when there is non-compliance with discovery rules and the pretrial order. He is given broad discretion in assuring that there is adequate opportunity for discovery and that parties are not unduly prejudiced. Carver v. Salt River Valley Water User Association, 104 Ariz. 533, 455 P.2d 374 (1969).	Where there has been noncompliance with discovery rules and pretrial order, trial judge is given broad discretion in assuring that there is adequate opportunity for discovery and that parties are not unduly prejudiced. 17 A.R.S. Uniform Rules of Practice in the Superior Court, rule VIII.	"Where there has been noncompliance with discovery rules and pretrial order, trial judge is given broad discretion in assuring that there is adequate opportunity for discovery and that parties are not unduly prejudiced. 17 A.R.S. Uniform Rules of Practice in the Superior Court, rule VIII."	034305.docx	LEGALISE-00144311-LEGALISE-00144312	Condensed, SA	0.38	0	1	0	1	1
1090	United Esquilting & Weeklings, L.L.Woman & Sons, 48 Ill App. 3d 1201	30+3224	Rule 103(b) further aims to protect a defendant from unnecessary delay in the service of process and to prevent the plaintiff from circumventing the applicable statute of limitations by filing suit before the expiration of the limitations period but taking no action to have defendants served until the plaintiff is ready to proceed with the litigation. Kote, 325 Ill.App.3d at 949, 759 N.E.2d at 133. The rule's further purpose is to promote the expeditious handling of suits by giving trial courts the discretion to dismiss a claim or preclude the evidence necessary to support a claim if a plaintiff fails to exercise reasonable diligence. Breznicki v. Vohra, 258 Ill.App.3d 702, 197 Ill.Dec. 342, 631 N.E.2d 945, 347 (1994). Notwithstanding these generalizations, dismissal of a cause with prejudice under Rule 103(b) is considered a harsh penalty. Breznicki, 258 Ill.App.3d at 705-06, 197 Ill.Dec. 342, 631 N.E.2d at 348.	In general, imposition of sanctions for noncompliance with rules of discovery and pretrial order is discretionary with the trial court, and the exercise of that discretion will not be interfered with unless it appears that the trial court is guilty of apparent abuse of discretion. Supreme Court Rules, rule 219(c), S.H.A. ch. 110A, § 219(c).	"In general, imposition of sanctions for noncompliance with rules of discovery and pretrial order is discretionary with the trial court, and the exercise of that discretion will not be interfered with unless it appears that the trial court is guilty of apparent abuse of discretion. Supreme Court Rules, rule 219(c), S.H.A. ch. 110A, § 219(c)."	034321.docx	LEGALISE-00144393-LEGALISE-00144394	Condensed, SA	0.11	0	1	0	1	1
1091	ENM Enterprises Two v. Promberg, Perrow & Weeklings, L.L.Woman & Sons, 48 Ill App. 3d 1201	307A+563	Before a court may dismiss a cause as a sanction, it must first consider the six factors delineated in Kote, and set forth explicit findings of fact in the opinion. Kote, 325 Ill.App.3d at 949, 759 N.E.2d at 133. Breznicki v. Vohra, 258 Ill.App.3d 702, 197 Ill.Dec. 342, 631 N.E.2d 945, 347 (1994). Notwithstanding these generalizations, dismissal of a cause with prejudice under Rule 103(b) is considered a harsh penalty. Breznicki, 258 Ill.App.3d at 705-06, 197 Ill.Dec. 342, 631 N.E.2d at 348.	Before a court may dismiss a cause as a sanction for willful noncompliance with court order, it must first consider the appropriate factors and set forth explicit findings of fact in the opinion. Kote, 325 Ill.App.3d at 949, 759 N.E.2d at 133. Breznicki v. Vohra, 258 Ill.App.3d 702, 197 Ill.Dec. 342, 631 N.E.2d 945, 347 (1994). Notwithstanding these generalizations, dismissal of a cause with prejudice under Rule 103(b) is considered a harsh penalty. Breznicki, 258 Ill.App.3d at 705-06, 197 Ill.Dec. 342, 631 N.E.2d at 348.	"Before a court may dismiss a cause as a sanction for willful noncompliance with court order, should it first consider the appropriate factors and set forth explicit findings of fact in the opinion. Kote, 325 Ill.App.3d at 949, 759 N.E.2d at 133. Breznicki v. Vohra, 258 Ill.App.3d 702, 197 Ill.Dec. 342, 631 N.E.2d 945, 347 (1994). Notwithstanding these generalizations, dismissal of a cause with prejudice under Rule 103(b) is considered a harsh penalty. Breznicki, 258 Ill.App.3d at 705-06, 197 Ill.Dec. 342, 631 N.E.2d at 348."	034428.docx	LEGALISE-00144397-LEGALISE-00144398	Condensed, SA	0.6	0	1	0	1	1

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1002	Oluwabukola Olawoye v. Olujiayo Akintola, 198 So. 3d 1086	307A-746	Trial courts exercise discretion in sanctioning a party for failure to attend a pretrial conference, and striking that party's pleadings is an available punishment; however, the severe sanction of striking pleadings and entering a default must be supported by an express finding in the order "that the party's conduct was willful and contemptuous." <i>Schneider v. Sports, 313 So.3d 1167, 1168 (Fla. 4th DCA 2019)</i> ; <i>Schneider v. Sports, 313 So.3d 1167, 1168 (Fla. 4th DCA 2019)</i> (reversing order striking pleadings and entering a default as sanction for failure to comply with discovery order; order lacked express written findings of willful or deliberate violation); <i>Greenhill v. Shands Teaching Hosp. & Clinics, Inc., 834 So.2d 886 (Fla. 1st DCA 2003)</i> (reversing dismissal of action upon appellants' failure to comply with pretrial conference order due to lack of finding in order that party's conduct was willful or deliberate); <i>Kelley v. Schmidt, 613 So.2d 948 (Fla. 3th DCA 1995)</i> (reversing order striking pleadings and entering a default as sanction for failure to comply with discovery order; order lacked express written findings of willfulness or contemptuous behavior).	Trial courts exercise discretion in sanctioning a party for failure to attend a pretrial conference, and striking that party's pleadings is an available punishment; however, the severe sanction of striking pleadings and entering a default must be supported by an express finding in the order "that the party's conduct was willful and contemptuous." <i>Wests F.S.A. RCP Rule 1.200(c)</i> .	"Can a court impose sanctions for party's failure to attend status conferences, including striking pleadings and entering a default against the offending party?"	034561.docx	LEGALASE-00143979- LEGALASE-00143980	SA, Sub	0.69	839 0	15,344 0	14,873 1	21,876 1	9,029
			As indicated above, when a plaintiff's case is dismissed pursuant to 22 NYCRR 202.27(b) it may only be restored upon a showing of both a reasonable excuse for the default in failing to appear at the conference and a meritorious cause of action. <i>McInney's CPLR 3404; NYC Rules, § 202.27(b)</i> .	When a plaintiff's Supreme Court case is dismissed for failure to appear at a scheduled calendar call or conference, it may only be restored upon a showing of both a reasonable excuse for the default in failing to appear at the conference and a meritorious cause of action. <i>McInney's CPLR 3404; NYC Rules, § 202.27(b)</i> .	"When a plaintiff's case is dismissed for failure to appear at a scheduled calendar call or conference, can it only be restored upon a showing of both a reasonable excuse for the default in failing to appear at the conference and a meritorious cause of action?"	034598.docx	LEGALASE-00143965- LEGALASE-00143966	SA, Sub	0.4	0 0	0 0	1 1	1 1	
1003	<i>Herrick v. Monkey Farm Cafe, 183 Conn. App. 45</i>	307A-563	Our practice does not favor the termination of proceedings without a determination of the merits of the controversy where that can be brought about with due regard to necessary rules of procedure... Therefore, although dismissal of an action is not an abuse of discretion where a party shows a deliberate, contemptuous or unwarranted disregard for the court's authority... the court should be reluctant to employ the sanction of dismissal except as a last resort. [The sanction of dismissal should be imposed only as a last resort, and where it would be the only reasonable remedy available to vindicate the legitimate interests of the other party and the court. (Citations omitted; internal quotation marks omitted.) <i>Millbrook Owners Ass'n, Inc. v. Hamilton Standard, 257 Conn. 1, 157-17, 776 A.2d 1115 (2001)</i> ; see also <i>Usovskiy v. Jacobson, 267 Conn. 73, 91-92, 836 A.2d 1167 (2003)</i> .	Although dismissal of an action is not an abuse of discretion where a party shows a deliberate, contemptuous or unwarranted disregard for the court's authority, the court should be reluctant to employ the sanction of dismissal except as a last resort.	"Although dismissal of an action is not an abuse of discretion where a party shows a deliberate, contemptuous or unwarranted disregard for the court's authority, should the court be reluctant to employ the sanction of dismissal except as a last resort?"	034612.docx	LEGALASE-00144191- LEGALASE-00144192	Condensed, SA	0.72	0 0	1 1	0 0	1 1	
1004	<i>In re Gen. Motors Corp., 296 S.W.3d 813</i>	13-6917	17 However, the fact that the district court lacked jurisdiction to adjudicate Landmark's claims until action had been taken by the Board does not compel the conclusion that the district court's order of dismissal is void. As the supreme court explained in <i>Sabaru</i> , when the trial court lacks subject-matter jurisdiction because an agency has exclusive jurisdiction over certain claims, the trial court should dismiss those claims without prejudice. <i>Sabaru, 84 S.W.3d at 227</i> . If the impediment to the trial court's jurisdiction over certain Code-based claims can be cured by awaiting final determination of matters that are within the administrative agency's exclusive jurisdiction, the claims may be abated. <i>Id. at 228</i> . Accordingly, even when the trial court lacks subject-matter jurisdiction to adjudicate certain claims that are within the administrative agency's exclusive jurisdiction, the court still has the power to either abate or dismiss those claims. See <i>id. at 227-28</i> ; see also <i>Houston Mun. Employees Pension Sys. v. Ferrell, 248 S.W.3d 151, 158 (Tex.2007)</i> ("Courts always have jurisdiction to determine their own jurisdiction."). The decision to abate or dismiss in this situation was within the district court's discretion. The district court did not abuse itself of this discretion by entering the order of abatement. The district court retained the power to dismiss the claims "even to dismiss them inadvertently."	Even when the trial court lacks subject-matter jurisdiction to adjudicate certain claims that are within the administrative agency's exclusive jurisdiction, the court still has the power to either abate or dismiss those claims.	"Even when the trial court lacks subject-matter jurisdiction to adjudicate certain claims that are within the administrative agency's exclusive jurisdiction, does the court still have the power to either abate or dismiss those claims?"	033124.docx	LEGALASE-00146146- LEGALASE-00146148	Condensed, SA	0.84	0 0	1 1	0 0	1 1	
1005														
1006	<i>Total Holding v. USA v. Curran Composites, 999 A.2d 873</i>	92-3963	On a motion to dismiss for lack of personal jurisdiction, the plaintiff bears the burden of making a prima facie case establishing jurisdiction under the relevant statute. When deciding the motion, the court is to decide, first, whether jurisdiction is appropriate under a relevant statute and, if so, whether the exercise of such jurisdiction would offend the defendant's due process rights under the Fourteenth Amendment of the United States Constitution. All factual disputes are viewed in a light most favorable to the plaintiff.	When deciding a motion to dismiss for lack of personal jurisdiction, the court is to decide, first, whether jurisdiction is appropriate under a relevant statute and, if so, whether the exercise of such jurisdiction would offend the defendant's due process rights under the Fourteenth Amendment of the United States Constitution. U.S.C.A. Const.Amend. 14.	"When deciding a motion to dismiss for lack of personal jurisdiction, is the court to decide, first, whether jurisdiction is appropriate under a relevant statute and, if so, whether the exercise of such jurisdiction would appropriate under a relevant statute?"	033193.docx	LEGALASE-00145250- LEGALASE-00145251	Condensed, Order, SA	0.34	1 1	1 1	0 0	1 1	1

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	Sommer v. Maharaj, 451 Mass. 615	307A+689	Among the pertinent considerations in determining whether conduct warrants dismissal are "the severity of the violation, the legitimacy of the party's excuse, repetition of violations, the deliberateness vel non of the misconduct, mitigating excuses, prejudice to the other side, and to the operations of the court, and the adequacy of lesser sanctions." Hallenbeck, 81-1 Jd at 1, 2, 11x Cir. 1996). As a minimal requirement, there must also give sufficient consideration to the prejudice that the innocent would incur if the motion [to dismiss] were denied, and whether there are more suitable, alternative penalties." Monahan v. Washburn, 400 Mass. 126, 128 T29, 507 N.E.2d 1045 (1987).	An order to dismiss with prejudice or the imposition of a sanction that results in no default judgment should be used only in those cases where a party's failure to appear has been consummated, unexcused, or unwarranted disregard of the court's authority."	What are among the pertinent considerations in determining whether a party's conduct warrants dismissal of a lawsuit?	10379.docx	LEGALASE-00094404- LEGALASE-00094405	SA, Sub	0.51	0	1	14,873	21,276	9,029
1052	Stringer v. Packaging Corp Am., 351 Ill App. 3d 135	307A+690	"However, if evidence is destroyed, altered, or lost, a defendant is not entitled to summary judgment simply because it failed to produce relevant testimony. 327 Ill.App.3d 135, 692 N.E.2d 289 (Ill. Ct. App. 1st Dist. 1997), cert. den.; see also consider the particular circumstances of the case to determine what, if any, sanction is appropriate. Shimanovsky, 181 Ill.2d at 127, 229 Ill.Dc. 513, 692 N.E.2d at 292'93. An order to dismiss with prejudice or the imposition of a sanction that results in a default judgment should be used only in those cases where a party's actions show a deliberate, contumacious, or unconscionable disregard of the courts authority. Shimanovsky, 181 Ill.2d at 127, 229 Ill.Dc. 513, 692 N.E.2d at 291.	An order to dismiss with prejudice or the imposition of a sanction that results in no default judgment should be used only in those cases where a party's failure to appear has been consummated, unexcused, or unwarranted disregard of the court's authority."	"Should an order to dismiss with prejudice that results in a default judgment be used only in those cases where a party's failure to appear has been consummated, unexcused, or unwarranted disregard of the court's authority?"	Pretial Procedure - Memo # 7425 - C - SG.docx	R0SS-00328616-R0SS-00328665	Condemned, SA	0.66	0	1	0	1	
1053	Stapleton v. Shower, 231 S.W.3d 341	307A+681	In the factor, the Court further emphasized that the trial court is to consider the factors set forth in Ward, 809 S.W.2d 717, when making a determination as to whether to enter dismissal pursuant to CR 41.02. Those factors include: "(1) the extent of the plaintiff's personal responsibility; (2) the history of dilatoriness; (3) whether the attorney's conduct was willful and in bad faith; (4) the meritlessness of the claim; (5) prejudice to the other party; and (6) the availability of alternative sanctions." Id. at 851 (citing Ward, 809 S.W.2d at 719). These same factors are equally relevant when dismissal is imposed as a sanction for failure to comply with discovery requests. In Ward, the fact underlying the basis for the dismissal was the plaintiff's failure to timely respond to a discovery request and, consequently, the identification of an expert witness. Thus, the law set forth in Ward and, as clarified in Toler, is controlling when the court considers the issue of involuntary dismissal with prejudice.	Factors a trial court is to consider in ruling on the involuntary dismissal of a case for failure to prosecute or to comply with discovery rules include: (1) the extent of the party's personal responsibility; (2) the history of dilatoriness; (3) whether the attorney's conduct was willful and in bad faith; (4) the meritlessness of the claim; (5) prejudice to the other party; and (6) the availability of alternative sanctions. Rules Civ.Proc., Rules 57.02, 74.02.	What are factors a trial court should consider while ruling on the involuntary dismissal of a case for failure to prosecute or to comply with discovery rules?	10911.docx	LEGALASE-00094631- LEGALASE-00094632	SA, Sub	0.54	0	1	0	1	
1055	Neppl v. Murphy, 316 Ill. App. 3d 581.	307A+688	Our standard of review of motions to dismiss, under either section 2-615 or 2-619, is de novo. R.Fine, Inc. v. Shadesco, Inc., 305 Ill.App.3d 633, 639, 238 Ill.Dec. 809, 722 N.E.2d 913, 915 (1999). A motion to dismiss based on section 2-615 admits all well-pleaded facts and attacks the legal sufficiency of the complaint; but a motion to dismiss under section 2-619 does not admit such allegations and instead attempts to establish the insufficiency of the complaint or its defenses by external submissions which act to defeat the plaintiffs claim. S.H.A. 73S ICS 5/2- 619.	A motion for involuntary dismissal admits the legal sufficiency of the complaint, and raises defects, defenses, or other affirmative matter which appear on the face of the complaint or are established by external submissions which act to defeat the plaintiffs claim. S.H.A. 73S ICS 5/2- 619.	"Can a motion to dismiss raise defects, defenses, or other affirmative matter appearing on the face of the complaint or are established by external submissions that defeat the plaintiff's claim?"	Pretial Procedure - Memo # 7655 - C - KG.docx	R0SS-003299893-R0SS-003299892	SA, Sub	0.63	0	0	1	1	
1056	Dare v. New Hampshire Dep't Educ., 60N.H. 727	307A+681	"Generally, in ruling upon a motion to dismiss, the trial court must independently establish a basis upon which relief may be granted.' Atwater v. Town of Plainfield, 160 N.H. 507, 8-A.J. 159, 161 (2010) (quotation omitted)." When the motion to dismiss does not challenge the sufficiency of the plaintiffs legal claim but, instead, raises certain defenses, the trial court must look beyond the plaintiffs unsubstantiated allegations and determine, based on the facts, whether the plaintiff has sufficiently demonstrated his right to claim relief." Id. at 5307, 8-A.J. at 161 (quoting State ex rel. Gosselin v. Board of Prisoners, 138 N.H. 507, 630 A.2d 241, 243 (1993)). Because the underlying facts are not in dispute, we review the trial court's determination de novo. Johnsonv. Town of Wolfeboro Planning Bd., 157 N.H. 94, 96, 94S A.2d 113 (2008).	When the motion to dismiss does not challenge the sufficiency of the plaintiffs legal claim but, instead, raises certain defenses, the trial court must look beyond the plaintiffs unsubstantiated allegations and determine, based on the facts, whether the plaintiff has sufficiently demonstrated their right to claim relief."	On the court took beyond petitions', insubstantiated allegations, and determined that the defendants have sufficiently demonstrated their right to claim relief"	10252.docx	LEGALASE-00094982- LEGALASE-00094983	Condemned, SA	0.68	0	1	0	1	
1057	Billups v. Jude, 240 Neb. 494	307A+681	"In absence of showing of good cause, litigant's failure to prosecute civil action, resulting in noncompliance with Nebraska Supreme Court's Case Progression Standards for civil actions in district courts, is basis to dismiss action on account of lack of diligent prosecution."	In absence of showing of good cause, litigant's failure to prosecute civil action, resulting in noncompliance with Nebraska Supreme Court's Case Progression Standards for civil actions in district courts, is basis to dismiss action on account of lack of diligent prosecution."	"Is a litigant's failure to prosecute a civil action, resulting in noncompliance with the court's a basis to dismiss an action on account of a lack of diligent protection?"	Pretial Procedure - Memo # 7752 - C - NS.docx	R0SS-003286654-R0SS-003286655	Condemned, SA	0.71	0	1	0	1	

ROW	Judicial Opinion	WKNS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
1058	Beltz v City of Chicago, 2013 L App 1541 126853	307A-561.1	A motion for involuntary dismissal pursuant to section 2-619(b) admits the legal sufficiency of the complaint, but raises defects, defenses, or counterclaims. The court may grant summary judgment if there is no genuine issue as to material facts and the plaintiff's claim. 735 ILCS 5/2-619(a)(West 2010). An "affirmative matter" under section 2-619(b)(9) is "something in the nature of a defense that negates the cause of action completely or refutes crucial conclusions of law or conclusions of material fact contained in or inferred from the complaint." In re Estate of Schenker, 209 Ill.2d 456, 461, 283 Ill.Doc. 707, 808 N.E.2d 995 (2004). Once a defendant satisfies the initial burden of proof by showing that its motion is timely and that the plaintiff has failed to establish that the defendants' unfounded or requires the resolution of an essential element of material fact before it is proven," Reilly v. Wyeth, 377 Ill.App.3d 20, 36, 315 Ill.Doc. 428, 876 N.E.2d 740 (2007) (quoting Medize & 103rd Currency Exchange, Inc., 156 Ill.2d at 116, 189 Ill.Doc. 31, 639 N.E.2d 732).	An "affirmative matter," within meaning of statute permitting involuntary dismissal of claim when it is barred by other affirmative matter avoiding consideration of material facts and the plaintiff's claim, is something in the nature of a defense that negates the cause of action completely or refutes crucial conclusions of law or conclusions of material fact contained in or inferred from the complaint.	Is an affirmative matter something in the nature of a defense that negates the cause of action completely or refutes crucial conclusions of law or conclusions of material fact contained in or inferred from the complaint?	Pretial Procedure - Memo # 7804 - C - 003324217 PC_57825.docx	ROSS-00323216-ROSS-003324217	Condensed, SA	0.6	839 0	15,344 1	14,873 0	21,876 1	9,029
1059	In re Civ. Collector, 2016 IL App 16d1150712	307A-561.1	Section 2-619 of the Code allows a litigant to obtain an involuntary dismissal of an action or claim based upon certain defects or defenses. See 735 ILCS 5/2-619 (West 2015). The statute's purpose is to provide litigants with a method for disposing of issues of law and easily proven issues of fact early in a case, often before discovery has been conducted. S.H.A., 735 ILCS 5/2-619.	The purpose of the statute authorizing involuntary dismissal of a complaint based upon certain defects or defenses is to provide litigants with a method for disposing of issues of law and easily proven issues of fact early in a case, often before discovery has been conducted. S.H.A., 735 ILCS 5/2-619.	What would be the purpose of the statute authorizing involuntary dismissal of a complaint based upon certain defects or defenses?	LEGAEASE-0014764D-LEGAEASE-00147641 083255.docx	LEGAL EASE: 0014764D-LEGAL EASE: 00147641	Condensed, SA	0.16	0 0	1 0	0 0	1 0	
1060	People v. Charles, 61 NY.2d 321.	63+1(1)	The statute requires a party to bring the agreement or understanding, however, and dispositive remove his conduct from that proscribed by it. (see People v. Chapman, 13 N.Y.2d 97, 242 N.Y.S.2d 200, 159 N.E.2d 160). If the briber sought to affect his judgment or action in his capacity as a public servant and within the "colorable" authority of the public position he held at the time of the bribe offer, the crime was committed. The defendant's intent to corruptly influence the official was established by a public official "to act corruptly in a matter to which he bears some official relation, though the act itself may be technically beyond his official powers or duties" (People v. LaFaro, 250 N.Y. 336, 342, 165 N.E. 518; see People v. Herkowitz, 41 N.Y.2d 1094, 396 N.Y.S.2d 356, 364 N.Y.2d 1127). Manifestly, as a clerk in the courts, defendant came within this rule and his conduct constituted a crime although he did not have authority to admit traffic tickets.	"Colorable" authority exist when a bribe is offered to a public official to act corruptly in matter to which he bears some official relation, though the act itself may be technically beyond his official powers or duties. McGinnis's Penal Law § 200.10.	Does colorable authority exist when a bribe is offered to a public official to act corruptly in matter to which he bears some official relation through the act itself may be technically beyond his official powers or duties?	Bribery - Memo #936 - C - JIL_57928.docx 003306920	ROSS-0032306919-ROSS-003306920	Condensed, SA	0.76	0 0	1 0	0 0	1 0	
1061	United States v. Terry, F.3d 607	63+1(1)	Yet these objectives do not add a new element to these criminal statutes but signal that the statutory requirement must be met that the payments were made in connection with an agreement, which is to say "in return for official actions under it. So long as a public official agrees that payments will be made in return for such actions, what is needed is a meeting of the minds between the parties. What is needed is a mutual understanding that the payments are to be made in exchange for most bribery agreements will be oral and informal. The question is one of inferences taken from what the participants say, mean and do, all matters that juries are fully equipped to assess. "[M]otive and consequences, not formalities," are the keys for determining whether a public official entered an agreement to accept a bribe, and the true of fact is "quite capable of being inferred from the circumstances surrounding the payment and the payoff." Evans v. United States, 504 U.S. 255, 274, 112 S.Ct. 1881, 119 L.Ed.2d 57 (1992) (Kennedy, J., concurring in part and concurring in the judgments; see also McCormick, 500 U.S. at 270, 111 S.Ct. 1807 ("[t]he goes without saying that motives of intent are for the jury to consider"); Reg. 206 F.3d at 488 (finding that intent "distinguishes criminal conspiracy from civil conspiracy"; see also Evans v. United States, 504 U.S. at 255, 274, 112 S.Ct. 1881, 119 L.Ed.2d 57 (1992)).	Motives and consequences, not formalities, are the keys for determining whether a public official entered an agreement to accept a bribe, and the true of fact is "quite capable of being inferred from the circumstances surrounding the payment and the payoff." Evans v. United States, 504 U.S. 255, 274, 112 S.Ct. 1881, 119 L.Ed.2d 57 (1992) (Kennedy, J., concurring in part and concurring in the judgments; see also McCormick, 500 U.S. at 270, 111 S.Ct. 1807 ("the goes without saying that motives of intent are for the jury to consider"); Reg. 206 F.3d at 488 (finding that intent "distinguishes criminal conspiracy from civil conspiracy"; see also Evans v. United States, 504 U.S. at 255, 274, 112 S.Ct. 1881, 119 L.Ed.2d 57 (1992)).	Is formality the key for determining whether a public official entered in agreement to accept a bribe?	Bribery - Memo #987 - C - JIL_57952.docx 003282647	ROSS-003282648-ROSS-003282647	SA, Sub	0.78	0 0	0 0	1 0	1 0	
1062	Holy v. Mary's Tonic Corp., 542 So. 2d 316	307A-563	Rule 41(b) of the Mississippi Rules of Civil Procedure provides for an involuntary dismissal with prejudice. "[f]or failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him." The rule also allows for the dismissal to operate as an adjudication on the merits. Id. However, because the law favors a trial on the merits, a dismissal with prejudice should be executed reluctantly. Hoffman v. [redacted], 1993 WL 10254 (S.D. Miss. 1/22/93), aff'd, 1993 WL 10254 (S.D. Miss. 1/22/93), on remand, 1993 WL 10254 (S.D. Miss. 1/22/93). In on extreme and harsh sanctions which is reserved for the most egregious cases. Id. Moreover, dismissal for failure to comply with an order of the [court] is appropriate only where there is a clear record of delay or contumacious conduct and no lesser sanctions would not serve the best interests of justice." Wallace, 572 So.2d at 376.	Districts for failure to comply with an order of the court is appropriate only where there is a clear record of delay or contumacious conduct and lesser sanctions would not serve the best interests of justice. Rules Civ.Proc., Rule 41(b).	% dismissal for failure to comply with an order of the court is appropriate only where there is a clear record of delay or contumacious conduct and lesser sanctions would not serve the best interests of justice?	Pretial Procedure - Memo # 7111 - C - PC_57785.docx 003282343	ROSS-003282343-ROSS-003282343	SA, Sub	0.74	0 0	0 0	1 0	1 0	
1063	Newk v. Orca Oil Co., P.2d 756	307A-590.1	Alaska Civil Rule 1(c) authorizes the court to dismiss a case either on its own motion or at the motion of a party if no proceeding has been taken in the case for more than one year. Before ordering dismissal pursuant to Rule 41(e), the trial court must undertake a two-step inquiry: it must initially inquire whether the party filing dismissal has engaged in any proceedings within the previous one-year period; if not, then it must next inquire whether good cause exists for the delay. Wilks v. Wetco, Inc., 653 P.2d 529, 536 (Alaska 1993).	Before ordering dismissal for want of prosecution, court must initially require whether party filing dismissal has engaged in any proceedings within the previous one-year period and, if not, must inquire as to whether good cause existed for the delay. Rules Civ.Proc., Rule 41(e).	"Before ordering dismissal for want of prosecution, should a court initially inquire whether the party filing dismissal has engaged in any proceedings within the previous one-year period? Within the previous one-year period?"	Pretial Procedure - Memo # 7147 - C - RS_58038.docx 003279895	ROSS-003279894-ROSS-003279895	SA, Sub	0.49	0 0	0 0	1 0	1 0	

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1064	Stacy v. Johnson, 25 So. 3d 307A+581 365	307A+581	"[I]n reviewing a trial court's decision to dismiss under [Rule] 41(b), this court must consider whether the plaintiff has been guilty of dilatory or contumacious conduct." Walker v. Walker, 577 So.2d 137, 375 (Miss. 1990).	Cases are dismissed with prejudice for failure to prosecute if the record shows that a plaintiff has been guilty of dilatory or contumacious conduct. In such cases, the court and where lesser sanctions would not serve the best interests of justice. Rules Civ.Proc., Rule 41(b).	"Are cases dismissed with prejudice for failure to prosecute, if the record shows that a plaintiff has been guilty of dilatory or contumacious conduct?"	056405.docx	LEGALCASE-00148369-LEGALCASE-00148390	SA, Sub	0.62	839	15,344	14,873	21,876	9,079
			once it has been filed." Hensarling v. Holly, 972 So.2d 716, 720 (8) (Miss.Ct.App.2007). However, "[t]he trial court has the power to dismiss for failure to prosecute as a means necessary to the orderly expedition of justice and the court's control of its own docket." Id. at 719 (5). Such cases are dismissed with prejudice "if the record shows that a plaintiff has been guilty of dilatory or contumacious conduct, or has repeatedly disregarded the court's orders and failed to take any steps to bring the case to trial, and that lesser sanctions would not serve the best interests of justice." Id. at 720 (8).											
1065	Lake Meredith Reservoir Co. v. Amity Mut. Ins. Co., 698 P.2d 1340	307A+581	The decision whether to dismiss an action because of the plaintiff's failure to prosecute lies within the sound discretion of the trial court. Rudd v. Rogerson, 152 Colo. 374, 381 P.2d 995, 998 (1963); Crevi v. Town of Greenwood Village, 147 Colo. 350, 353 P.2d 1050, 1052 (1964); BA Leasing Corp. v. Board of Assessment Appeals, 653 P.2d 481, 484 (Colo.App.1982). The burden is upon the plaintiff to present a case in due course without unusual or unreasonable delay. Crevi v. Town of Greenwood Village, 147 Colo. at 193, 362 P.2d at 1052; Johnson v. Westland Theatres, Inc., 117 Colo. 346, 349, 187 P.2d 932, 933 (1947); BA Leasing Corp. v. Board of Assessment Appeals, 653 P.2d at 481. When evaluating a motion to dismiss for failure to prosecute, a trial court must bear in mind that courts "exist primarily to afford a forum to settle disputes." Johnson v. Westland Theatres, Inc., 117 Colo. at 346, 187 P.2d at 932, 535, 537, 403 P.2d 762, 769 (1965). The burden of showing that the plaintiff is mitigating circumstances or a reasonable excuse for the delay, however, an unusual delay in prosecution justifies an exercise of the trial court's discretion in dismissing an action. Rudd v. Rogerson, 152 Colo. at 374, 381 P.2d at 998; Yampa Valley Coal Co. v. Vellotta, 83 Colo. 235, 263 P. 717 (1928); BA Leasing Corp. v. Board of Assessment Appeals, 653 P.2d 80 (Colo.App.1982).	When evaluating motion to dismiss for failure to prosecute, trial court must bear in mind that courts exist primarily to afford forum to settle (illegible matters between disputing parties. Rules Civ.Proc., Rule 41(b)(1, 2).	"Should a court bear in mind that courts exist primarily to afford a forum to settle (illegible matters between disputing parties, when evaluating a motion to dismiss for failure to prosecute?"	Pretrial Procedure - Memo # 8005 - C - DHA.docx	LEGALCASE-00038673-LEGALCASE-00038674	Condensed, SA	0.84	0	1	0	1	
			A dismissal for failure to prosecute is a harsh sanction that runs counter to the policy of the law favoring the disposition of cases on their merits. Accordingly, such dismissal should be used only in extreme situations where a plaintiff has engaged in a clear pattern of delay or contumacious conduct.											
1066	Holt v. PHS, 619 P.2d 558, 1700A+758.1	1700A+758.1	A dismissal for failure to prosecute is a harsh sanction that runs counter to the policy of the law favoring the disposition of cases on their merits. Accordingly, such dismissal should be used only in extreme situations where a plaintiff has engaged in "a clear pattern of delay or contumacious conduct." See cases cited in Wright & Miller, 9 Federal Practice and Procedure § 2369 at 193-95. The action of plaintiff in the present case cannot possibly be characterized either in terms of a pattern of delay or contumacious conduct. The court, therefore, declines to dismiss the plaintiff's complaint. Every avenue that was available to him in his effort to appear at the August 16 hearing, in fact, only nine days after the district court rescheduled the date of the preliminary hearing, plaintiff formally requested the court to issue a writ to provide for his appearance. Second, the conduct of plaintiff, taken as a whole, suggested that he carried on the prosecution of his action with all due diligence. For example, plaintiff exchanged sets of interrogatories and answers with defendant in an expedient manner. Plaintiff's failure to appear at the August 16 hearing was both unintentional and fully explained. In Link v. Walsh & R. Co., supra, 370 U.S. 626, 634, 82 S.Ct. 1386, 1390, 8 L.Ed.2d 734, the Supreme Court indicated that a mere "unexplained" absence of a plaintiff from a pre-trial conference may not be sufficient alone to justify a dismissal for lack of prosecution. In comparison to the "unexplained" absence in Link, the absence of plaintiff in the present case was less serious. Herein, the district court was fully apprised, in advance, that plaintiff's incarceration would prevent his appearance at the preliminary hearing. Plaintiff's August 16 hearing does not in any way suggest bad faith on plaintiff's part. When he made his request, plaintiff apparently entertained the reasonable hope that the district court would issue a writ that would enable him to	Is a dismissal for failure to prosecute a harsh sanction that runs counter to the policy of law favoring the disposition of cases on their merits and, accordingly, such dismissal should be used only in extreme situations where a plaintiff has engaged in a clear pattern of delay or contumacious conduct.		056593.docx	LEGALCASE-00148786-LEGALCASE-00148787	Condensed, SA	0.86	0	1	0	1	
			"When a party moves to dismiss a complaint pursuant to CPR § 32.11(a)(7), the standard is whether the pleading states a cause of action, not whether the proponent of the pleading has a cause of action. In other words, the court must accept the facts as alleged in the complaint as true, and determine whether the facts as alleged in the complaint state a true and plausible cause of action. The court must not engage in any cognizable legal theory. McKinney's CPR § 32.11(a)(7).											
1067	Pinkster Mut. Holdings v. Pinkster, 139A.D.3d 1032	307A+624	Whether the proponent of the pleading states a cause of action, not whether the proponent of the pleading has a cause of action. In other words, the court must accept the facts as alleged in the complaint as true, and determine whether the facts as alleged in the complaint state a true and plausible cause of action. The court must not engage in any cognizable legal theory. McKinney's CPR § 32.11(a)(7).	Is one of the standard for determining a motion to dismiss is whether the pleading states a cause of action?	Is one of the standard for determining a motion to dismiss is whether the pleading states a cause of action?	Pretrial Procedure - Memo # 7958 - C - OJ_58.921.docx	ROSS-00310825-ROSS-00310826	Condensed, SA	0.68	0	1	0	1	
			within any cognizable legal theory. . . if the court considers evidentiary material, the criterion then becomes whether the proponent of the pleading has a cause of action, not whether he has stated one. . . [The motion] must be denied unless it has been shown that . . . no significant dispute exists regarding it" [Thaw v. North Shore Univ. Hosp., 129 A.D.3d 987, 12 N.Y.S.3d 152 (6th Jd., 2016) and Thaw v. North Shore Univ. Hosp., 129 A.D.3d 987, 12 N.Y.S.3d 152 (6th Jd., 2016)]. McKinney's CPLR § 32.11(a)(7).											

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1068	In re Marriage of Butler, 112 S.W.3d 341	307A-585.1	A trial court has the inherent power to dismiss a case for want of prosecution, but exercises that authority to do so as also given by the rules of the court. The court may do so at any time, even after a trial has begun, or when the case is not disposed of within the time standards set by the Texas Supreme Court. T. ex. R. Civ. P. 165a; Villarreal v. San Antonio Truck & Equip., 994 S.W.2d 628, 630 (Tex.1999). Rule 165a also provides a procedure for reinstatement of causes dismissed for failure to appear at any hearing. See Tex.R. Civ. P. 165a(3). The courts have held, however, that the reinstatement provision applies only to cases dismissed for failure to appear, not to cases dismissed for want of prosecution. Burton v. Burton, 989 S.W.2d 659, 663 (Tex.1998). The court has also held that the standard for reviewing a dismissal for want of prosecution is abuse of the court's discretion, whereas the test for reinstatement of a case dismissed under the failure to appear provision of Rule 165a is mistake or accident on the part of the aggrieved party. Burrows v. Hoffman, 959 S.W.2d 351, 352 (Tex.1998).	A trial court has the inherent power to dismiss a case for want of prosecution, but exercises authority to do so as also given by the rules of the court. The court may do so at any time, even after a trial has begun, or when the case is not disposed of within the time standards set by the Texas Supreme Court. Vernon's Ann.Texas Rules Civ.Proc. Rule 165a.	Can a court dismiss a case pursuant to either its inherent power or in accordance with rule for want of prosecution?	Perital Procedure - Memo 8300 - C- PB_5841.docx	K055-002023745-K055-003381746	SA, Sub	0.68	839	15,344	14,873	21,876	9,079
										0	0	1	1	
1069	Coors v. Berry, 304 S.W.3d 215	307A-622	In order to avoid dismissal for failure to state a claim upon which relief can be granted, a petition must invoke substantive principles of law entitling the plaintiff to relief and ultimate facts informing the defendant of that which plaintiff will attempt to establish at trial.	In order to avoid dismissal for failure to state a claim upon which relief can be granted, a petition must invoke substantive principles of law entitling the plaintiff to relief and ultimate facts informing the defendant of that which plaintiff will attempt to establish at trial.	In order to survive a motion to dismiss, should a petition invoke substantive principles of law entitling plaintiff to relief and ultimate facts informing the defendant of that which plaintiff will attempt to establish at trial?	Perital Procedure - Memo 8333 - C- SN_58846.docx	K055-0023280643-K055-003380604	SA, Sub	0.22	0	0	1	1	
										0	0			
1070	Overseas v. Mandi, 216 P.3d 621	307A-581	In balancing the policies favoring resolution of disputes on the merits and the policies favoring prompt disposition of cases, the court considered the length of the delay, the reason for the delay, any prejudice that may result to the defendant, and the extent to which the plaintiff has renewed efforts to prosecute the case. Lake Meredith Reservoir Co., 698 P.2d at 1345; Prejudice is presumed in the case of an unusual delay. See BA Leasing Corp. v. Bd. of Assessment Appeals, 653 P.2d 80, 82 (Colo.App.1982), and in the absence of a reasonable excuse for the delay, or a mitigating circumstance, a trial court may exercise its power to dismiss the action. Lake Meredith Reservoir Co., 698 P.2d at 1344.	In balancing the policies favoring resolution of disputes on the merits and the policies favoring prompt disposition of cases, the court considered the length of the delay, the reason for the delay, any prejudice that may result to the defendant, and the extent to which the plaintiff has renewed efforts to prosecute the case.	What factors are considered in balancing the policy favoring prompt disposition of cases and the policy favoring resolution of disputes on the merits and the policies favoring prompt disposition of cases?	Perital Procedure - Memo 8302 - C- KI_58968.docx	K055-0023280643-K055-003380604	SA, Sub	0.45	0	0	1	1	
1071	Zeller v. Sofie, 498 S.W.3d 846	307A-622	We review the trial court's grant of a motion to dismiss de novo. Dawson v. Dairy Farmers of Am., Inc., 449 S.W.3d 81, 83 (Mo.App.W.D.2014). A motion to dismiss for failure to state a cause of action is solely a test of the adequacy of the plaintiff's petition. It assumes that all of plaintiff's averments are true, and liberally grants to plaintiff all reasonable inferences therefrom. No attempt is made to weigh any facts alleged as to the truth or falsity of the plaintiff's averments, or to determine if the facts alleged meet the elements of a recognized cause of action, or of a cause that might be adopted in that case. Coors v. Berry, 304 S.W.3d 215, 217 (Mo.App.W.D.2009). "[T]o avoid dismissal, the petition must invoke substantive principles of law entitling the plaintiff to relief and ultimate facts informing the defendant of that which plaintiff will attempt to establish at trial." Id. at 217-18.	To avoid dismissal for failure to state a cause of action, the petition must invoke substantive principles of law entitling the plaintiff to relief and ultimate facts informing the defendant of that which plaintiff will attempt to establish at trial.	In order to avoid dismissal for failure to state a cause of action, should a petition invoke substantive principles of law entitling plaintiff to relief and ultimate facts informing the defendant of that which plaintiff will attempt to establish at trial?	036946.docx	LEGAL-00150066-LEGAL-00150067	SA, Sub	0.74	0	0	1	1	
1072	Leone v. Bates Plan-A Home of Sidney, 144 A.D.2d 759	388A-14	We affirm. A case stricken from a trial calendar, and not restored within one year, is automatically deemed abandoned pursuant to CPLR 3404 (see, <i>Curtin v. Grand Union Co.</i> , 124 A.D.2d 918, 508 N.Y.S.2d 333; <i>Merrill v. Robinson, supra</i>). Supreme Court retains discretion to restore the case to the calendar where a plaintiff demonstrates a viable excuse, a meritorious claim, the lack of prejudice and an absence of intent to abandon the case. <i>Robinson, supra</i> . The court's discretion to restore the case is not limited until a year after the case was effectively abandoned (see, <i>Merrill v. Robinson, supra</i> , 99 A.D.2d at 579, 470 N.Y.S.2d 960). The only excuse proffered for this delay was that Catherine Leone continued to reject the proposed settlement and efforts had been made, unsuccessfully, to retain other counsel. Notably, plaintiff's recited no other activity relative to this case (cf., <i>Curtin v. Grand Union Co.</i> , <i>supra</i>). Moreover, plaintiffs failed to include an affidavit of merit; plaintiffs' reference to the trial court's decision to grant summary judgment in their briefs is a mere conclusory statement that one defendant's verdict that two witnesses no longer employed and were unavailable. Under these circumstances, Supreme Court clearly did not abuse its discretion in refusing to vacate the dismissal.	Case stricken from trial calendar, and not restored within one year, is automatically deemed abandoned; Supreme Court retains discretion to restore case to calendar where plaintiff demonstrates viable excuse, meritorious claim, lack of prejudice, and absence of intent to abandon case. McKinney's CPLR 3404.	Is action which is stricken from trial calendar and not restored within one year thereafter deemed abandoned and dismissed pursuant to statute?	036946.docx	LEGAL-00150066-LEGAL-00150067	Condensed SA	0.76	0	1	0	1	
1073	Nasca v. Sgro, 130 A.D.3d 388	307A-622	On a motion to dismiss a complaint pursuant to CPLR 3211(a)(7) for failure to state a claim, the court must consider the facts and allegations liberally. The factual allegations deemed to be true, and the nonmoving party must be given the benefit of all favorable inferences (see <i>Leon v. Martinez</i> , 84 N.Y.2d 83, 87-88, 614 N.Y.S.2d 972, 638 N.E.2d 511; <i>Dolphin Holdings, Ltd. v. Gaarder & White Shipping, Inc.</i> , 122 A.D.3d 901, 901-902, 988 N.Y.S.2d 107; <i>Carillo v. Stony Brook Univ.</i> , 119 A.D.3d 508, 508-509, 987 N.Y.S.2d 868). "The test of the sufficiency of a pleading is 'whether it gives sufficient notice of the transactions, occurrences, or series of transactions or occurrences intended to be proved and whether the facts stated are such as to warrant a belief that they will be proved.'" <i>IV. Gruppo Pools, Inc. v. Massello</i> , 106 A.D.3d 722, 723, 964 N.Y.S.2d 563, quoting <i>Pae v. Park</i> , 81 A.D.2d 444, 449, 440 N.Y.S.2d 710 [internal quotation marks omitted].	The test of the sufficiency of a pleading, on a motion to dismiss for failure to state a claim, is whether the facts and allegations, taken liberally, intended to be proved and whether the requisite elements of any cause of action known to the law can be discerned from its averments. McKinney's CPLR 3211(a)(7).	Is the test of the sufficiency of a pleading whether it gives sufficient notice of the transactions, occurrences, or series of transactions or occurrences intended to be proved?	036946.docx	LEGAL-00150066-LEGAL-00150067	SA, Sub	0.61	0	0	1	1	

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Between Original Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
	PMC Multifamily Capital Management, LLC v. First United Methodist Church of W. Dundee, 74 N.E.3d 144 (Ill. App. Ct. 1st Dist. 2014), cert. denied, 555 S.W.3d 525 (Ill. 2018).	307A+479	When considering a motion to dismiss for failure to state a claim upon which relief can be granted, it is not limited to the allegations in the complaint. The basis for the motion is that the plaintiff's allegations in the complaint, when considered alone and taken as true, are insufficient to state a claim as a matter of law. See Comptrol v. Shum, 528 S.W.2d 188 (Tenn.1975). Although allegations of pure legal conclusion will not sustain a complaint, see Ruth v. Ruth, 213 Tenn. 82, 372 S.W.2d 285, 287 (1963), a complaint "need not contain in minute detail the facts that give rise to the claim," so long as the complaint does "state facts sufficient to show that the claim is not barred by the law." Donaldson v. Donaldson, 557 S.W.2d 80, 61 (Tenn.1977); White v. Revco Discount Drug Centers, 33 S.W.3d 713, 718, 725 (Tenn.2000); accord, Glens v. Mulliken ex rel. McElwaney, 75 S.W.3d 383, 391, 399, 403-404 (Tenn.2002).	The basis for a motion to dismiss a complaint for failure to state a claim upon which relief can be granted is that the allegations in the complaint, when considered alone and taken as true, are insufficient to state a claim as a matter of law. Rules Civ. Proc., Rule 12.02(b).	"Would the basis for a motion to dismiss a complaint for failure to state a claim upon which relief can be granted be the fact that the plaintiff's allegations in the complaint, when considered alone and taken as true, are insufficient to state a claim as a matter of law?"	037244.docx	LEGALISE-0015160-LEGALISE-0015161	Condensed, SA	0.74	839	15,344	14,873	21,876	9,079
1074			We turn then to the dismissal of the Church's amended complaint for failure to state a claim under section 2.415. All that is required to survive a motion to dismiss for failure to state a claim is that the plaintiff allege facts that, taken as true, are sufficient to bring a claim within a recognized cause of action. Kanewa v. Weems, 2014 IL 11581.1, 33, 383 Ill.Dec. 107, 13 N.E.3d 1228. In other words, a complaint should not be dismissed on section 2.415 grounds unless no set of facts would warrant relief. Borcia v. Hayma, 2015 IL App (2d) 140599, 20, 391 Ill. Dec. 622, 31 N.E.3d 298. Section 2.415 does not require the plaintiff to state facts justifying a triable issue of fact. It merely requires the plaintiff to state facts justifying a triable issue of law. The class of aliens is itself a heterogeneous multitude of persons with a wide-ranging variety of ties to this country.	All that is required to survive a motion to dismiss for failure to state a claim is that the plaintiff allege facts that, taken as true, are sufficient to bring a claim within a recognized cause of action; in other words, a complaint should not be dismissed for failure to state a claim unless no set of facts would warrant relief. 735 Ill. Comp. Stat. Ann. § 2-615.	"Is it that the plaintiff allege facts taken as true are sufficient to bring a claim within a recognized cause of action, all that is required to survive a motion to dismiss for failure to state a claim?"	037461.docx	LEGALISE-0015181-LEGALISE-0015182	SA, Sub	0.47	0	0	1	1	1
1075			The fact that all persons, aliens and citizens alike, are protected by the Due Process Clause does not lead to the further conclusion that all aliens are entitled to enjoy all the advantages of citizenship or, indeed, to the conclusion that all aliens must be placed in a single homogeneous legal classification. For a host of constitutional and statutory provisions rest on the fact that aliens are not citizens. The class of aliens is itself a heterogeneous multitude of persons with a wide-ranging variety of ties to this country.	The fact that all persons, aliens and citizens alike, are protected by the due process clause does not lead to the further conclusion that all aliens are entitled to enjoy all of the advantages of citizenship or, indeed, to the conclusion that all aliens must be placed in a single homogeneous legal classification. U.S. Const. Amend. 5, § 4.	Does the fact that aliens are protected by the Due Process Clause lead to a conclusion that all aliens must be placed in a single homogeneous legal classification?	006880.docx	LEGALISE-0015256-LEGALISE-0015259	SA, Sub	0.47	0	0	1	1	1
1076			Ameritrust argues that the forfeiture clause does not destroy negotiability because it is merely a provision regarding security and collateral. He is, in essence, arguing that the clause is not a condition of the instrument – states that it is secured, whether by mortgages, reservation of title, or otherwise. As to collateral, O.C.G.A. § 11-3-1121(b) provides: "The negotiability of an instrument is not affected by . . . [a] statement that collateral has been given for the instrument or in the case of default on the instrument the collateral may be sold." Ameritrust contends that these statutes render the note negotiable. We disagree. Forfeiture clause in notes executed by limited liability companies is not a condition of the instrument. It is a statement that if partner did not timely make all payment owing under notes, then he would retroactively lose all interest in limited partnership, qualified as impermissible "other promise, order, obligation, or power," which prevented promissory notes from qualifying as "negotiable instruments."	Forfeiture clause in notes executed by limited partner at time he acquired interest in limited partnership, providing that partner did not timely make all payments owing under notes, would not retroactively lose all interest in limited partnership, which prevented promissory notes from qualifying as "negotiable instruments" under Georgia law. O.C.G.A. § 11-3-104(1).	"Does a partner's loss of interest in a limited partnership, if he fails to make timely payments on a note?"	010700.docx	LEGALISE-0015294-LEGALISE-0015295	Condensed, SA, Sub	0.63	0	1	1	1	1
1077			In determining a motion pursuant to CPLR 3211(b)(7), the court must "accept the facts as alleged in the complaint as true, accord plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (Leon v. Martinez, 84 N.Y.2d 83, 87-88, 634 N.Y.S.2d 972, 638 N.E.2d 511). A court may consider evidentiary material submitted by a defendant in support of a motion to dismiss pursuant to CPLR 3211(b)(7) (see CPLR 3211(d); Sokol v. Leader, 74 A.D.3d 1180, 1181, 904 N.Y.S.2d 153). When considering a motion pursuant to CPLR 3211(b)(7), the court must determine whether the (plaintiff) has a cause of action, not whether he (or she) has stated one, and, unless it has been shown that a material fact is claimed by the (plaintiff) to be one that is not a fact at all and unless it can be said that no significant dispute exists regarding it . . . dismissal should not eventuate" (Guggenheimer v. Ginzburg, 43 N.Y.2d 266, 275, 401 N.Y.S.2d 382, 372 N.E.2d 37; see Mawere v. Landau, 130 A.D.3d 986, 988, 15 N.Y.S.3d 120).	When evidentiary material is considered on a motion to dismiss for failure to state a cause of action and the motion has not been converted to one for summary judgment, the criterion is whether the plaintiff has a cause of action, not whether he or she has stated one, and, unless it has been shown that a material fact is claimed by the plaintiff to be one that is not a fact at all and unless it can be said that no significant dispute exists regarding it, dismissal should not eventuate. McKinney's CPLR 3211(b)(7).	"When the motion is not converted to one for summary judgment, is the criterion whether the plaintiff has a cause of action, not whether it has stated one?"	Perital Procedure - Memo # 8695 - C - PB_59733.docx	ROSS-00237913-ROSS-00237914	SA, Sub	0.56	0	0	1	1	1
1078			Nevertheless, the court may consider evidentiary material in evaluating a motion made under CPLR 3211(b)(7). When such material is considered, "the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one, and, unless it has been shown that a material fact is claimed by the pleader to be one that is not a fact at all and unless it can be said that no significant dispute exists regarding it, dismissal should not eventuate." (Guggenheimer v. Ginzburg, 43 N.Y.2d 266, 275, 401 N.Y.S.2d 382, 372 N.E.2d 37; see Mawere v. Landau, 130 A.D.3d 986, 988, 15 N.Y.S.3d 120).	A court may consider evidentiary material in evaluating a motion to dismiss; when such material is considered, the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one, and, unless it has been shown that a material fact is claimed by the pleader to be one that is not a fact at all, and unless it can be said that no significant dispute exists regarding it, dismissal should not eventuate. McKinney's CPLR 3211(b)(7).	Can a court consider evidentiary material in evaluating a motion to dismiss?	Perital Procedure - Memo # 8708 - C - MS_59744.docx	ROSS-00232607	SA, Sub	0.52	0	0	1	1	1
1079			Nevertheless, the court may consider evidentiary material in evaluating a motion made under CPLR 3211(b)(7). When such material is considered, "the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one, and, unless it has been shown that a material fact is claimed by the pleader to be one that is not a fact at all and unless it can be said that no significant dispute exists regarding it, dismissal should not eventuate." (Guggenheimer v. Ginzburg, 43 N.Y.2d 266, 275, 401 N.Y.S.2d 382, 372 N.E.2d 37; see Mawere v. Landau, 130 A.D.3d 986, 988, 15 N.Y.S.3d 120).	A court may consider evidentiary material in evaluating a motion to dismiss; when such material is considered, the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one, and, unless it has been shown that a material fact is claimed by the pleader to be one that is not a fact at all, and unless it can be said that no significant dispute exists regarding it, dismissal should not eventuate. McKinney's CPLR 3211(b)(7).	Can a court consider evidentiary material in evaluating a motion to dismiss?	Perital Procedure - Memo # 8708 - C - MS_59744.docx	ROSS-00232607	SA, Sub	0.52	0	0	1	1	1

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1.080	Easter Seal Rehab. Ctr. for the Elderly v. City of Columbus, 2015-01 Ohio App. 3d 448	307A-551	Although it is unclear from the record what role these allegations played in the trial court's decision to grant summary judgment against the defendant, it is clear that the trial court's decision to grant summary judgment was based on the fact that the defendant failed to establish a prima facie case for a sanction for any of these actions, we also find an abuse of discretion. The sanctions of dismissal of a plaintiff's action or entry of a judgment against a defendant is the most drastic of sanctions and should be imposed reluctantly and only as a last resort when all other enforcement powers at the court's disposal have failed to advance the litigation. <i>Kuban v. Labinsky</i> , 178 Ill.App.3d 191, 127 Ill.Doc. 404, 533 N.E.2d 22 (1988). These drastic sanctions should not be invoked except in the most egregious circumstances, such as when a party has acted in a contumacious and unwarranted disregard of the court's authority. <i>Wilkins v. T. Enterprises, Inc.</i> , 177 Ill.App.3d 514, 126 Ill.Doc. 784, 532 N.E.2d 469 (1988). We hold that the record does not support such a drastic sanction as entry of judgment against the defendant for procedural irregularities alleged by the plaintiff.	These sanctions of dismissal of a plaintiff's action or entry of a judgment against a defendant is the most drastic of sanctions and should be imposed reluctantly and only as a last resort when all other enforcement powers at the court's disposal have failed to advance the litigation.	Should the sanctions of dismissal of a plaintiff's action or entry of a judgment against a defendant be imposed only as a last resort when all other enforcement powers at the court's disposal have failed to advance the litigation?	037855.docx	LEGALASE-00152201-LEGALASE-00152202	Condensed, SA	0.74	839	15,344	14,873	21,876	9,079
1.081	Lynch v. Town of Falmouth, 10A 3d 107	307A-551.1	When "filing upon a motion to dismiss, the trial court is required to determine whether the allegations contained in the [plaintiff's] pleadings are sufficient to state a basis upon which relief may be granted." <i>Avery v. N.H. Dept. of Educ.</i> , 162 N.H. 604, 606, 34 A.3d 712 (2011). "To make this determination, the court would normally accept all facts pled by the [plaintiff] as true, construing them most favorably to the [plaintiff]." <i>Id.</i> "[plaintiff] as true, construing them most favorably to the [plaintiff]." <i>Id.</i> "[plaintiff's] legal claim but, instead, raises certain defenses, the trial court does not look beyond the pleadings to determine whether the plaintiff has demonstrated [his] right to claim relief." <i>Id.</i> (quotation omitted). "A jurisdictional challenge based upon lack of standing is such a defense." <i>Id.</i> at 607, 34 A.3d 712. When "the relevant facts are not in dispute, we review the trial court's determination on standing de novo."	When a motion to dismiss does not challenge the sufficiency of a plaintiff's legal claim but, instead, raises certain defenses, the trial court must look beyond the plaintiff's unsubstantiated allegations and determine, based on the facts, whether the plaintiff has sufficiently demonstrated his right to claim relief.	Is a jurisdictional challenge raised in a motion to dismiss a defense for which the trial court will look beyond the plaintiff's allegations in this complaint?	038684.docx	LEGALASE-00154093-LEGALASE-00154094	Condensed, SA	0.69	0	1	0	1	
1.082	Lake Meredith Reservoir Co. v. Apple Auto. Tr. Co., 698 P.2d 1940	307A-551	The burden is upon the plaintiff to prosecute a case in due course without undue delay. <i>See, e.g., Town of Greenwald v. Village of 427</i> Colo. at 993, 363 P.2d at 1022; <i>Johnson v. Westland Theatres, Inc.</i> , 117 Colo. 345, 349, 187 P.2d 932, 933 (1947); <i>BA Leasing Corp. v. Board of Assessment Appeals</i> , 653 P.2d at 81. When evaluating a motion to dismiss primarily to afford a forum to settle litigable matters between disputing parties." <i>Mear v. Jones</i> , 157 Colo. 535, 537, 403 P.2d 767 (1965). In the absence of a showing by the plaintiff of mitigating circumstances or a showing of due diligence by the defendant, the trial court's decision to dismiss is justified. <i>See, e.g., Board of Assessment Appeals v. Yampa Valley Coal Co. v. Valenta</i> , 83 Colo. 235, 263 P. 717 (1938); <i>BA Leasing Corp. v. Board of Assessment Appeals</i> , 653 P.2d 80 (Colo.App.1982).	When evaluating a motion to dismiss for failure to prosecute, a trial court must look beyond the plaintiff's unsubstantiated allegations and determine, based on the facts, whether the plaintiff has sufficiently demonstrated his right to claim relief.	Should court have ruled that courts exist primarily to afford a forum to settle litigable matters between disputing parties when evaluating motion to dismiss for failure to prosecute?	038684.docx	LEGALASE-00154111-LEGALASE-00154112	Condensed, SA	0.78	0	1	0	1	
1.083	Sheldon v. Kettering Health Network, 2015-Ohio 3248	307A-679	We begin our review with the standard applicable to a Civ.R. 12(B)(6) motion. A motion to dismiss a complaint for failure to state a claim upon which relief can be granted, pursuant to Civ.R. 12(B)(6), tests the sufficiency of a complaint. For a defendant to prevail, it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to relief. <i>O'Brien v. University Community Tenants Union, Inc.</i> , 42 Ohio St.2d 242, 245, 327 N.E.2d 753 (1975). A court must construe the complaint in the light most favorable to the plaintiff. <i>See, e.g., In re: American Medical Association's Litigation</i> , 2015-1 Ohio App. 3d 150, 152, 532 N.E.2d 753 (1988). We conduct a de novo review of a dismissal under Civ.R. 12(B)(6). <i>Grover v. Bartsch</i> , 170 Ohio App.3d 188, 2006-Ohio-6115, 866 N.E.2d 547, 16 (2d Dist.).	A court considering a motion to dismiss a complaint for failure to state a claim upon which relief can be granted must construe the complaint in the light most favorable to the plaintiff, presume all of the factual allegations to be true, and make all reasonable inferences in the plaintiff's favor. <i>Rules Civ.Proc., Rule 12(B)(6)</i> .	"In construing a complaint, upon a motion for failure to state a claim upon which relief can be granted, should a court presume that all factual allegations in the complaint are true?"	038664.docx	LEGALASE-00154501-LEGALASE-00154502	Condensed, SA, Sub 0.63	0.63	0	1	1	1	1
1.084	H & R Block Bank v. Perry, 2015-01 Ohio App. 3d 776	307A-690	A dismissal with prejudice is an extreme sanction, and a trial court has discretion to impose such a sanction. <i>See, e.g., In re: Apple River</i> 2015-01 Ohio App. 3d 402, 405 (1st Dist. 2015). "When a trial court dismisses a complaint with prejudice is the ultimate sanction in the civil justice system. It is reserved for the most aggravating circumstances." <i>Marr v. Dep't of Transp.</i> , 614 So.2d 619, 620 (Fla. 2d DCA 1993) ("As this court has observed, dismissal with prejudice is the most severe of sanctions and should be reserved for the most egregious conduct."). Among other things, this sanction is reserved for circumstances in which the trial court makes findings supported by the record that the conduct involved was willful and prejudicial to the interests of justice and that no lesser sanction would be just under the circumstances.	Among other things, the extreme sanction of dismissal with prejudice is reserved for circumstances in which the trial court makes findings supported by the record that the conduct involved was willful and prejudicial to the interests of justice and that no lesser sanction would be just under the circumstances. <i>West v. S.A. RO Rule 1.420(b)</i> .	"Among other things, is the extreme sanction of dismissal with prejudice reserved for circumstances in which the trial court makes findings supported by the record that the conduct involved was willful?"	024610.docx	LEGALASE-00155815-LEGALASE-00155816	Condensed, SA, Sub 0.59	0.59	0	1	1	1	1

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1096	Cesare v. Cesare, 154 N.J. 354	3.77+13	Although we agree that, under an objective standard, courts should not consider the victim's actual circumstances but consider a plaintiff's reasonable person in that situation would have believed the defendant's threat. See <i>State v. Milano</i> , 167 N.J. Super. 318, 323, 420 A.2d 854 (Law Div. 1979), aff'd, 177 N.J. Super. 361, 432 A.2d 129 (App. Div.), cert. denied, 58 N.J. 521, 420 A.2d 333 (1980). As the court in <i>Milano</i> , supra, found, a threat does not even have to be communicated directly to the victim to be actionable; "the legal sufficiency of the evidence ... is controlled not by the identity of the hearer as such, but by considering whether a reasonable person in the defendant's position would have believed the defendant's threat." Therefore, in a domestic violence context, a court should regard any past history of abuse by a defendant as part of a plaintiff's individual circumstances and, in turn, factor that history into its reasonable person determination. See <i>Chenque-Puery</i> , supra, 145 N.J. at 342, 678 A.2d 694 ("At defendant's trial for terroristic threats to kill, his prior acts of domestic violence would be admissible for the limited purpose of demonstrating that [the victim] had reason to believe that he would make terroristic threats to kill her."). See also <i>State v. Kelly</i> , 97 N.J. 417, 456, 427 N.J. 694 A.2d 564 (1997) (finding, in case of spousal murder, that evidence of domestic abuse was relevant to determine reasonableness of defendant's self-defense claim that deadly force was necessary to protect herself against death or serious bodily harm); <i>State v. Kelly</i> , 97 N.J. 178, 200701, 478 A.2d 364 (1984) (same).	Although, under objective standard, courts should not consider victim's actual circumstances but consider victim's individual circumstances and determine whether a reasonable person in that situation would have believed defendant's threat for purposes of determining whether terroristic threat was made. N.J.S.A. 2C:12-3, subd. b.	Should the courts consider a victim's individual circumstances and background to determine whether a reasonable person would have believed the defendant's threat?	046710.docx	LEGALASE-00157597-LEGALASE-00157598	Condensed, SA, Sub	0.79	839	1	15,344	14,873	21,876	9,079
									0	0	1	1	1	1	
1097	In re Ricky T., 87 Cal. App. 4th 1132	3.77+11	Respondent relies too much on judging a threat solely on the words spoken. It is clear by case law that threats are judged in their context. (Bolin, supra, 18 Cal.4th at pp. 339-340, 75 Cal. Rptr. 2d 412, 256 P.2d 374; People v. Brooks (1994) 26 Cal.App.4th 142, 149, 31 Cal. Rptr. 2d 283) [conditional threats are true threats if their context reasonably conveys to victims that they are intended]. By this standard, appellants' "threats" lack credibility as indications of serious, deliberate statements of purpose. The lack of surrounding circumstances information is striking. Appellants' statements are not credible threats. The court's decision to grant the writ is reversed. The court shall remand the case to the trial court with instructions to grant the writ. "The use of the word 'so' in [section 422] indicates that unequivocality, unconditionality, immediacy and specificity are not absolutely mandated, but must be sufficiently present in the threat and surrounding circumstances to convey gravity of purpose and immediate prospect of execution to the victim." (People v. Stanford (1995) 32 Cal.App.4th 1152, 1157, 38 Cal.App. 2d 322 (Stanford))	Use of word "so" in Penal Code section requiring a prohibited threat to be "unequivocal, unconditional, immediate and specific" that it convey a "gravity of purpose and an immediate prospect of execution of threat" indicates that unequivocality, unconditionality, immediacy, and specificity are not absolutely mandated, but must be sufficiently present in threat and surrounding circumstances to convey gravity of purpose and immediate prospect of execution to victim. West's Ann. Cal. Penal Code § 422.	"What does the use of the word 'so' in the Penal Code section requiring a prohibited threat to be 'unequivocal, unconditional, immediate, and specific' indicate?"	046866.docx	LEGALASE-00157616-LEGALASE-00157617	Condensed, SA, Sub	0.53	0	1	1	1	1	1
									0	0	1	0	1	1	
1098	Binner v. Limestone City, 129 S.W.3d 710	307A+59	The motion to reinstate is the failure to present cases that fall into any of the three categories from being improperly dismissed. It essentially provides an opportunity for the dismissed plaintiff to explain the failure to appear at any hearing, if applicable, the failure to prosecute the case with due diligence, and to request the court to reconsider its decision to dismiss, in much the same manner as a motion for a new trial. Vernon's Ann. Texas Rules Civ. Proc., Rule 165a, 165b.	Motion to reinstate essentially provides an opportunity for the dismissed plaintiff to explain the failure to appear at any hearing, if applicable, the failure to prosecute the case with due diligence, and to request the court to reconsider its decision to dismiss, in much the same manner as a motion for a new trial. Vernon's Ann. Texas Rules Civ. Proc., Rule 165a.	"Does a motion to reinstate essentially provide an opportunity for the dismissed plaintiff to explain the failure to appear at any hearing, if applicable, the failure to prosecute the case with due diligence, and to request the court to reconsider its decision to dismiss, in much the same manner as a motion for a new trial. Vernon's Ann. Texas Rules Civ. Proc., Rule 165a."	025524.docx	LEGALASE-00158858-LEGALASE-00158859	Condensed, SA	0.67	0	1	0	1	1	
									0	0	1	0	1	1	
1099	In re Bekeleh, 213 S.W.3d 784	307A+59	A timely and proper motion to reinstate extends the trial court's plenary power until thirty days after the motion is overruled either by a written signed order or by operation of law. Vernon's Ann. Texas Rules Civ. Proc., Rule 165a(3).	A timely and proper motion to reinstate extends the trial court's plenary power until thirty days after the motion is overruled either by a written signed order or by operation of law. Vernon's Ann. Texas Rules Civ. Proc., Rule 165a(3).	Is a timely and proper motion to reinstate extends the trial court's plenary power until thirty days after the motion is overruled either by a written signed order or by operation of law?	025541.docx	LEGALASE-00158594-LEGALASE-00158595	SA, Sub	0.69	0	0	1	1	1	
									0	0	0	1	1	1	
1100	Stavrop v. Tourkles Pass & Co., 263 Ill. App. 3d 1010	307A+655.1	In his reply brief, plaintiff asks that this court remand this matter to the trial court for reconsideration to allow said case to proceed although he failed to seek such leave before the trial court. The general rule is that where the trial court dismisses a complaint and plaintiff does not ask for leave to amend, the cause of action must stand or fall on the sufficiency of the stricken pleading. <i>Malone v. Finley</i> (1983), 112 Ill. App.3d 934, 68 Ill. Dec. 387, 445 N.E.2d 1240; see also <i>Teter v. Clemens</i> (1986), 112 Ill.2d 252, 97 Ill. Dec. 487, 492 N.E.2d 1340 (where no indication in record that plaintiff sought leave to file amended complaint in circuit court and proposed amended pleadings do not appear in record on appeal, remand denied).	General rule is that where trial court dismisses complaint and plaintiff does not ask for leave to amend, cause of action must stand or fall on sufficiency of stricken pleading.	"Is the general rule that where a trial court dismisses a complaint and plaintiff does not ask for leave to amend, a cause of action must stand or fall on sufficiency of a stricken pleading?"	POSC-00308130-0055-Memo #11005-C-SIG_64125.docx	POSC-00308130-0055-00380831	Condensed, SA	0.76	0	1	0	1		
									0	0	1	0	1		

Application of

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ROW	Judicial Opinion	WKS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
1114	In re Vallance Bank, 422 S.W.3d 722	307A-697	A trial court has plenary power to reinstate a case within thirty days after it signs an order of dismissal for want of prosecution. Tex. Civ. P. 165a(3); 41; Neeve v. Wray, 893 S.W.2d 169, 170(Tex.App.-Houston [1st Dist.] 1995), no writ)(recognizing trial court has plenary power to reinstate case within thirty days of dismissal even in absence of motion to reinstate for want of prosecution extend the trial court's plenary power to dismiss for want of prosecution extend the trial court's plenary power in the same manner as a motion for new trial. Tex. Civ. P. 165a(3), (4). The Supreme Court of Texas has made clear, however, that an unperfected motion to reinstate is a nullity and does not extend the trial court's plenary jurisdiction or the time in which to file a notice of appeal. McConnell v. May, 800 S.W.2d 194, 194 (Tex.1990) (orig. proceeding) (granting mandamus relief to set aside order reinstating case more than thirty days after filing). 795 S.W.2d 696, 697(Tex.1986).	A verified motion to reinstate a case filed within thirty days of a dismissal for want of prosecution extends the trial court's plenary power to reinstate the case in the same manner as a motion for new trial. Vernon's Ann.Texas Rules Civ.Proc., Rule 165a(3), (4).	Does a verified motion to reinstate a case filed within thirty days of a dismissal for want of prosecution extend the trial court's plenary power to reinstate the case in the same manner as a motion for new trial?	040559.docx	LEGALASE-00162478- LEGALASE-00162479	SA, Sub	0.76	839 0	15,344 0	14,873 1	21,976 1	9,029
1115	Cornelius v. Benefield, 168 Sw. 3d 1028	307A-583	Rule 41(d) states "in relevant part": "For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him." The purpose of this rule is to provide trial judges the "inherent authority to dismiss cases without prejudice." Hanson, 108 Sw.3d at 927. The following factors are considered when reviewing a Rule 41(d) dismissal: "(1) a record of dilatory or contumacious conduct by the plaintiff; and (2) a finding ... that lesser sanctions would not serve the interests of justice. Additional "aggravating factors or actual prejudice may bolster the case for dismissal, but are not requirements." Holder v. Orange Grove Med. Specialists, P.A., 54 Sw.3d 192, 197 (Miss.2016). We will consider each factor.	The purpose of rule allowing dismissal of an action for failure to prosecute is to provide trial judges the inherent authority to dismiss cases as a means of controlling the courts' docket and ensuring expeditious justice. (Per Carlton, J., with four-judges concurring and one judge dissenting in result.) Rules Civ.Proc., Rule 41(d).	Is the purpose of rule allowing dismissal of an action for failure to prosecute to provide trial judges the inherent authority to dismiss cases as a means of controlling the courts' docket and ensuring expeditious justice?	040613.docx	LEGALASE-00162436- LEGALASE-00162437	Condemned, SA, Sub	0.62	0	1	1	1	1
1116	Bachert v. State, 941 P.2d 220	63+14	Bachert contends that Judge Rowland erred in failing to instruct the jury that in order to convict Bachert of bribery the jury had to find that Bachert acted with "corrupt intent." However, as we have previously stated, the crime of receiving a bribe under AS 11.56.10(a)(2) does not require the state to prove that the public servant acted corruptly. Under the court's instructions the jury had to find that Bachert knowingly accepted or agreed to accept a benefit upon the agreement or understanding that his public servant would be influenced by the benefit. These instructions were sufficient to explain the elements of the offense to the jury.	Jury instructions were sufficient to explain elements of receipt of bribe by public servant; under instructions, jury had to find that defendant knowingly accepted or agreed to accept benefit upon agreement or understanding that her opinion, judgment, action, decision, or exercise of discretion as public servant would be influenced by the benefit. AS 11.56.110(a)(2).	Are jury instructions sufficient when they explain that a public servant knowingly accepted or agreed to accept and be influenced by a benefit?	Bribery - Memo 1110 - AV_66517.docx	ROSS-003279674-ROSS-003279672	SA, Sub	0.49	0	0	1	1	
	Com. v. Young, 35 A3654	133H+95.1	"The determination by a trial court to declare a mistrial after jeopardy has attached is not one to be lightly undertaken, since the defendant has a substantial interest in having its fate determined by the jury first seated to hear the case. Alternatives before declaring a mistrial created doubt about the exercise of the court's discretion and may bar re-prosecution because of double jeopardy."	A failure of the lower court to consider less drastic alternatives before declaring a mistrial creates doubt about the exercise of the courts' discretion and may bar re-prosecution because of double jeopardy. U.S.C.A. Const.Amend. 5; Const. Art. I, § 10; Rules Crim.Proc., Rule 605, 432 Pa.C.S.A.	Does a failure of the lower court to consider less drastic alternatives before declaring a mistrial create doubt about the exercise of this court's discretion and may bar re-prosecution because of double jeopardy?	Double Jeopardy - Memo 387 - C-SM_66792.docx	ROSS-003280700-ROSS-003280701	SA, Sub	0.39	0	0	1	1	
1118	United States v. Andrews, 895 F.2d 406	133H+99	Even though fundamental, however, is a criminal defendant's "valued right to have his trial completed by a particular tribunal," Wade v. Hunter, 336 U.S. 684, 689 S.Ct. 834, 837, 93 L.Ed. 974 (1950). Such a defendant is entitled to insist that he be tried by the federal district court that attaches when the jury is empaneled and sworn." Cristie v. Bretz, 437 U.S. 28, 37, 98 S.Ct. 2156, 2161, 57 L.Ed.2d 243 (1978). Consequently, consistent with the double jeopardy provisions of the fifth amendment, a judge may not declare a mistrial over the defendant's own objection, even for the defendant's own benefit, unless there is a "manifest necessity for the act, or the ends of public justice would otherwise be defeated." United States v. Perez, 9 Wheat. (22 U.S.) 575, 580, 6 L.Ed. 165 (1824). See also, United States v. Somerville, 410 U.S. 456, 93 Cr.Lj. 1066, 35 L.Ed.2d 442 (1973).	Consistent with double jeopardy provisions of Fifth Amendment, court may not declare mistrial over defendant's objection, even for defendant's own benefit, unless there is manifest necessity for such act or ends of public justice would otherwise be defeated. U.S.C.A. Const.Amend. 5.	"Consistent with double jeopardy provisions of Fifth Amendment, court may not declare mistrial over defendant's objection, even for defendant's own benefit, unless there is manifest necessity for such act or ends of public justice would otherwise be defeated. U.S.C.A. Const.Amend. 5.	015483.docx	LEGALASE-00163571- LEGALASE-00163572	SA, Sub	0.68	0	0	1	1	
	People v. Baptiste, 330 NE.2d 377	133H+95.1	Because jeopardy attaches as soon as a jury has been sworn (CPL 40.30 [1](b)), our constitutional provisions also embrace the defendant's right to be free from prosecution if the first trial has not continued to conclusion. As a general rule, the prosecutor is entitled to one, and only one, opportunity to present evidence to the jury. It is the duty of the prosecutor to "have his trial completed by a particular tribunal on the first presentation of the evidence (see, Wade v. Hunter, 336 U.S. 684, 689 S.Ct. 834, 837, 93 L.Ed. 974 (1950))."	Because Jeopardy attaches as soon as jury has been sworn, constitutional provisions also embrace a defendant's right to be free from prosecution if first trial has not continued to conclusion. McKinney's Const. Art. 1, § 6; U.S.C.A. Const.Amend. 5; McKinney's CPL § 40.30, add. 1(b).	"Because jeopardy attaches as soon as jury has been sworn, do constitutional provisions also embrace a defendant's right to be free from prosecution if first trial has not continued to conclusion. McKinney's Const. Art. 1, § 6; U.S.C.A. Const.Amend. 5; McKinney's CPL § 40.30, add. 1(b).	Double Jeopardy - Memo 410 - C-NIS_66818.docx	ROSS-003280495-ROSS-003280496	Condemned, SA	0.75	0	1	0	1	
1119														
1120	Sturges v. Zeiman, 15 Misc. 3d 487	307A-697	To restore a matter to the trial calendar pursuant to CPLR § 3404, after a year has passed from it being marked off, a plaintiff must demonstrate (1) a reasonable excuse for the delay, (2) due diligence in pursuing the cause of action, (3) lack of intent to abandon, and (4) lack of prejudice to the opposing party. Baetta v. Noar, 287 A.D.2d 236, 731 N.Y.S.2d 335 (2nd Dept.2001); Neldinger v. Hidden Park Apartments, Inc., 306 A.D.2d 392, 760 N.Y.S.2d 892 (2nd Dept.2003). In this instance counsel for plaintiff failed to make the requisite showing of merit.	To restore a matter to the trial calendar, after a year has passed from it being marked off, a plaintiff must demonstrate: (1) a reasonable excuse for the delay; (2) due diligence in pursuing the cause of action; (3) lack of intent to abandon; and (4) lack of prejudice to the opposing party. McKinney's CR.R 3404.	What should a plaintiff demonstrate to restore a matter to the trial calendar pursuant to CPLR 3404 after a year has passed from it being marked off?	040709.docx	LEGALASE-00163227- LEGALASE-00163228	Condemned, SA	0.44	0	1	0	1	

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
1121	Narducci v. Mason's Disc. Store, 518 Pa. 94	307A+697	A request to open a judgment of non pro vs by way of grace and not of right and its grant or refusal is peculiarly a matter for the trial court's discretion. We are loathe to reverse the exercise of the court's equitable powers unless an abuse of discretion is clearly evident. Goldstein; Brigham v. Eighs of Philadelphia, 406 Pa. 29, 17 A.2d 841 (1962); Mason's Disc. Store v. Narducci, 507 Pa. 407, 408 A.2d 104 (1980). We request to open a judgment of non pro is directed to the conscience of this court, the court is required to balance the equities and to deny the petition even where all the elements coalesce (if the granting of relief would cause undue hardship or prejudice to the opponents. McBride v. Rome Township, 347 Pa. 228, 32 A.2d 212 (1943); Pierce to use v. Saseman, 326 Pa. 280, 192 A. 105 (1937); McGradden v. Pennzell Co., 326 Pa. 277, 191 A. 584 (1937); Kellerv v. Pittsburgh National Park Co., 146 Pa. 465, 23 A. 353 (1892).	In ruling on request to open judgment of non pro, which is directed to conscience of court, court is required to balance equities and to deny petition if granting of relief would cause undue hardship or prejudice to opponents, even though elements for granting relief coalesce.	"In ruling on a request to open judgment of non pro, which is directed to conscience of a court, is a court required to balance equities?"	040742.docx	LEGALASE-00163149- LEGALASE-00163150	Condensed, Order, SA	0.71	1	1	0	21,876	9,029
1122	Bimer v. Limestone City, 129 S.W.3d 710	307A+699	The motion to reinstate is the failure to prevent cases that fall into any of the three categories from being improperly dismissed. It essentially provides an opportunity for the dismissed plaintiff to explain the failure to appear at any hearing, if applicable, the failure to prosecute the case with due diligence, and to request the court to reconsider its decision to dismiss, in much the same manner as a motion for a new trial. See Vernon's Ann.Texas Rules Civ.Proc., Rule 165a; reinstatement standard, "conscious indifference," only applies to cases dismissed for failure to appear. Cf. Shook's, Gilmore, 951 S.W.2d 294, 297 (Tex.App.-Waco 1997, writ denied)(Where a dismissal order specifically stated that the dismissal was due to the party's failure to appear at a pretrial hearing, the party was only required to prove that failure to appear was not intentional or the result of conscious indifference). In this case, the court's notice required Bimer to show more. It required a showing of " . . . good cause . . . as to why these causes should not be dismissed. . . ."	Motion to reinstate essentially provides an opportunity for the dismissed plaintiff to explain the failure to appear at any hearing, if applicable, the failure to prosecute the case with due diligence, and to request the court to reconsider its decision to dismiss, in much the same manner as a motion for a new trial. Vernon's Ann.Texas Rules Civ.Proc., Rule 165a.	Does a motion for reinstatement essentially provide an opportunity for a dismissed plaintiff to explain failure to prosecute with due diligence?	040748.docx	LEGALASE-00163209- LEGALASE-00163210	Condensed, SA	0.67	0	1	0	1	1
1123	Whelchel v. Elfrink, 507 S.W.3d 598	307A+583	Missouri law requires a plaintiff to promptly secure service against a defendant and advance his cause of action with due diligence. Stephens v. Dum, 453 S.W.3d 441, 254 (Mo. App. S.D. 2014) (citing Affricon v. Be' Mic Transport, Inc. 395 S.W.2d 26, 28 (Mo. App. E.D. 1960)). Here, Plaintiff must show that the trial court abused its discretion in dismissing his claim against Defendant for an automobile accident that occurred on March 3, 2006.3 Peet, 103 S.W.3d at 876. A fair test of whether a trial court abused its discretion in dismissing a case for failure to prosecute with due diligence is whether the plaintiff had a reasonable opportunity to resolve the matter at trial. Brannon Hills Associates, L.P. v. First Am. Title Ins. Co., 258 S.W.3d 568, 573 (Mo. App. S.D. 2008). Mere delay in prosecution is insufficient to justify dismissal. West Central Concrete, LLC v. Reeves, 310 S.W.3d 778, 783 (Mo. App. M.D. 2010).	A fair test of whether a trial court abused its discretion in dismissing a case for failure to prosecute with due diligence is whether the plaintiff had a reasonable opportunity to resolve the matter at trial.	Is it a fair test of whether a trial court abused its discretion in dismissing a case for failure to prosecute with due diligence by seeing whether the plaintiff had a reasonable opportunity to resolve the matter at trial?	040856.docx	LEGALASE-00163855- LEGALASE-00163856	Condensed, SA	0.83	0	1	0	1	1
1124	State v. Abshire, 363 N.C. 322	135+2	We conclude that the legislature intended the definition of address under the registration program to carry an ordinary meaning of describing or indicating the location where someone lives. As such, the word indicates the place where one actually lives, not the place where one actually lives... Residence usu. just means bodily presence as an inhabitant in a given place...1. Notably, a person's residence is distinguishable from a person's domicile. See Hall, 280 N.C. at 605, 187 S.E.2d at 155. Domicile is a legal term of art that "denotes one's permanent, established home," whereas a person's residence may be only a "temporary, although actual," "place of abode." Id.	"Domicile" is a legal term of art that denotes one's permanent, established home, whereas a person's "residence" may be only a temporary, although actual, place of abode.	"Domicile" is a legal term of art that denotes one's permanent, established home, whereas a person's "residence" may be only a temporary, although actual, place of abode?"	Domicile - Memo 52 - C - 003319031-ROSS-003319032	Condensed, SA	0.77	0	1	0	1	1	
1125	Kearney v. Sch. Bd. of Palm Beach City, 997 So. 2d 259	141E+491	By statute, a "habitual truant" was a student who accumulated 15 unexcused absences within 90 calendar days, and thus, students who had 6, 7, or 8 absences, respectively, in a ninety-day period were not habitually truant, as a matter of law, and therefore, the principal had no duty to report them to the school board or Department of Highway Safety and Motor Vehicles (DHMV) or to file truancy petitions. West's F.S.A. — 1003.0181, 1003.2721. By statute, a "habitual truant" is a student who has accumulated 15 unexcused absences within 90 calendar days.	Do statutes or school board policy govern whether a child is habitually truant?	Do statutes or school board policy govern whether a child is habitually truant?	017907.docx	LEGALASE-00164345- LEGALASE-00164346	Condensed, SA, Sub 0.44	0.44	0	1	1	1	1
1126	Hollander v. Narves, 888 So. 2d 1275	307A+583	The trial court did not oppressively rule on the mother's motion to dismiss the father's petition. However, the import of the court's denying the mother's motion to dismiss the father's petition was to grant a dismissal of the father's petition for failure to prosecute, pursuant to Rule 41(b), Ala. R. Civ. P. The dismissal of a civil action for want of prosecution because of the plaintiff's failure to appear at trial falls within the judicial discretion of a trial court and will not be reversed upon an appeal except for an abusive use of that discretionary power." Thompson v. McQuigge, 464 So.2d 105, 116 (Ala.Civ.App.1985). Although dismissal is a harsh sanction, it is warranted where there is a clear record of delay, willful failure to appear, and a lack of diligence on the part of the plaintiff. Lynco, Pierce, Fenwick & Smith, Inc., 694 So.2d 332, 341 (Ala.1995).	The dismissal of a civil action for want of prosecution because of the plaintiff's failure to appear at trial falls within the judicial discretion of a trial court and will not be reversed upon an appeal except for an abusive use of that discretionary power.	Does the dismissal of a civil action for want of prosecution because of the plaintiff's failure to appear at trial fall within the judicial discretion of a court?	041100.docx	LEGALASE-00164933- LEGALASE-00164934	Condensed, SA	0.73	0	1	0	1	1

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ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
1144	Argonaut Ins. Co. v. Allstate Ins. Co., 869 S.W.2d 537	366+26	Subrogation is more widely known in the context of insurance companies seeking subrogation from their insureds for having involuntarily, under a contract of indemnity, paid a debt for which another is liable. See, e.g., Ortiz v. Great S. Fire & Cas. Ins. Co., 597 S.W.2d 342 (Tex.1980). The underlying justification for such a subrogation suit is to prevent the insured from receiving a double recovery. Id. at 343. However, the doctrine of subrogation is given a liberal application and is broad enough to include every instance in which one person, not acting voluntarily, has paid a debt for which another was primarily liable and which in equity and good conscience should have been discharged by the latter. 2 Forney, 531 S.W.2d at 386; McBoon v. Bennett Plumbing, Inc., 535 S.W.2d at 336. Thus, the two key elements of equitable subrogation are 1) that the party on whose behalf the claimant discharged a debt was primarily liable on the debt, and 2) that the claimant paid the debt involuntarily.	Doctrine of subrogation is given liberal application and is broad enough to include every instance in which one person, not acting voluntarily, has paid a debt for which another was primarily liable and which in equity and good conscience should have been discharged by the latter.	"Is subrogation broad enough to include every instance where one person, not acting voluntarily, pays another's debt?"	Subrogation - Memo 131 - VP C.docx	R055-0033.0060-R055-0033.0061	Condensed, SA	0.72	839	15,344	14,873	21,876	9,029
	Bennett Truck Transp. v. Williams Bros. Const., 256 S.W.3d 780	366+1	In its first issue, Bennett argues that because it paid the loss to the housing unit's owner as an insurer, it is entitled to seek reimbursement under the theory of equitable subrogation. When an insurer pays a loss, the insurer becomes equitably subrogated to its insured's rights and stands in the insured's shoes against the tortfeasor who caused the loss. See Argonaut Ins. Co. v. Allstate Ins. Co., 869 S.W.2d 537, 541 (Tex.App., Corpus Christi 1993, writ denied); accord Ward v. Allied Van Lines, Inc., 231 F.3d 135, 140 (4th Cir.2000). Equitable subrogation is a "legal fiction" whereby an obligation that is extinguished by a third party is treated as if it still exists to allow the creditor to seek recovery from the primarily liable party. See Murray v. Cade Co., No. 05-903048 TCV, 257 S.W.3d 291, 2008 WL 1888014, (Tex.App.-Dallas Apr.25, 2008, no pet.). Thus, the two key elements of equitable subrogation are 1) that the party claiming entitlement to equitable subrogation must prove that it acted involuntarily in paying a debt and that the debt was one on which the other party is primarily liable. See Mid-Continent Ins. Co. v. Liberty Mut. Ins. Co., 238 S.W.3d 765, 774 (Tex.2007); Murray, 257 S.W.3d at 296, 2008 WL 1888014. Texas courts are particularly hospitable to the doctrine. Murray, 257 S.W.3d at 296, 2008 WL 1888014, at *5.	"Equitable subrogation" is a legal fiction whereby an obligation that is extinguished by a third party is treated as if it still exists to allow the creditor to seek recovery from the primarily liable party.	Is equitable subrogation a legal fiction whereby an obligation to pay a debt is treated as if it still exists to allow the creditor to seek recovery from the primarily liable party?	Subrogation - Memo 297 - RM C.docx	R055-0033.1378-R055-0033.1379	Condensed, SA	0.84	0	1	0	1	
1146	M.C. Const. Corp. v. Gray Co., 17 F. Supp. 2d 541	257+113	By enacting "2 of the Federal Arbitration Act, Congress "declared a national policy favoring arbitration and withdrew the power of the states to require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration." Keating, 465 U.S. at 304, 305. Congress also Superseded the Federal Arbitration Act's "policy embodied in 2 of the Act." Haluska v. RAF Financial Corp., 875 F.Supp. 825, 828 (N.D.Ga.1994) (citing Perry v. Thomas, 482 U.S. 483, 491, 107 S.Ct. 2320, 96 L.Ed.2d 426 (1987)). Section 2 is a congressional declaration of "a liberal federal policy favoring arbitration agreements, notwithstanding any state substantive or procedural policies to the contrary." Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24, 103 S.Ct. 327, 74 L.Ed.2d 762 (1983).	By enacting provision of Federal Arbitration Act (FAA) that an arbitration provision is valid and irrevocable, congress declared a national policy favoring arbitration and withdrew the power of the states to require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration. 9 U.S.C.A. § 2.	Does the Federal Arbitration Act (FAA) withdraw the power of the states to require a judicial forum for the resolution of claims that the contracting parties agreed to resolve by arbitration?	Alternative Dispute Resolution - Memo 337 - RM.docx	R055-0033.1079-R055-0033.13080	SA, Sub	0.62	0	0	1	1	
1147	Casidy v. Murray, 34 F. Supp. 3d 579	16+111	The United States Supreme Court has defined the savings clause "as a grant to state courts of in personam jurisdiction, concurrent with admiralty courts." Lewis v. Lewis & Clark Marine, Inc., 531 U.S. 438, 445, 121 S.Ct. 993, 148 L.Ed.2d 931 (2001) (citing Red Cross Live v. Atl. Fruit Co., 264 U.S. 103, 123, 44 S.Ct. 274, 68 L.Ed. 582 (1924)). This concurrent jurisdiction includes the ability of state courts to oversee "all means other than the federal courts' exclusive jurisdiction" and to exercise their right or to redress the injury involved." Id. (quoting Red Cross Live, 264 U.S. at 124, 44 S.Ct. 274). Therefore, the exclusive jurisdiction of the federal courts only applies "to those maritime causes of action begun and carried on as proceedings in rem, that is, where a vessel or thing is itself treated as the offender and made the defendant by name or description in order to enforce a lien." Coronel v. AK Victory, 1 F.Supp.3d 1375, 1181, No. C13-2304JLD, 2014 WL 820270, at *4 (W.D.Wash. Feb. 26, 2014). United States v. 3565-596761, 74 S.Ct. 238, 98 L.Ed. 250 (1954).	The exclusive admiralty jurisdiction of the federal courts only applies to those maritime causes of action begun and carried on as proceedings in rem; that is, where a vessel or thing is itself treated as the offender and made the defendant by name or description in order to enforce a lien. 28 U.S.C.A. § 1333.	Is a federal courts admiralty jurisdiction exclusive to those maritime causes of action begun and carried on as proceedings in rem?	Admiralty Law - Memo 2 - MS.docx	LEGASE-00000403-LEGASE-00000405	SA, Sub	0.73	0	0	1	1	

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1148	Art v. Sewage Arrester 595 F.2d 1360	33B+46	Upon remand, the Board will have the opportunity to consider whether issue preclusion prevents the question of "likelihood of confusion" between the ET mark and AERQP A/ET from being relitigated before the Board. The doctrine of issue preclusion also sometimes known as "collateral estoppel," which serves to bar the revisiting of issues that have already been fully litigated, requires four factors: (1) identity of the parties; (2) determination of the issues was necessary to the resulting judgment; and (3) the party defending against preclusion had a full and fair opportunity to litigate the issue. Restatement (Second) of Judgments § 27.1(2).	The doctrine of "issue preclusion," also sometimes known as collateral estoppel, which serves to bar the revisiting of issues that have been already fully litigated, requires four factors: (1) identity of the parties; (2) determination of the issues was necessary to the resulting judgment; and (3) the party defending against preclusion had a full and fair opportunity to litigate the issue. Restatement (Second) of Judgments § 27.1(2).	How is doctrine of collateral estoppel or issue preclusion identified under the law?	Banks and banking - Memo 23 - 15.docx	ROSS-003289753-ROSS-003289756	Condensed, SA	0.84	0	1	14,873	21,276	9,029
1149	Pennsylvania Indep. Oil & Gas Producers Ass'n v. Indep. Prod., 135 A.3d 1118	14B+19	First, as our Supreme Court recognized in Empire Sanitary Landfill, Inc., 684 A.2d at 1054, "[t]he power to grant declaratory judgments and injunctive relief pursuant to the Declaratory Judgment Act, ... because only courts of record of the Commonwealth have that jurisdiction." Empire Sanitary Landfill, Inc., 684 A.2d at 1055. Moreover, the EHB only has jurisdiction to review post-enforcement matters and may not decide a pre-enforcement challenge. Machinongo Land and Coal Company, Inc. v. Empire Sanitary Landfill, Inc., 684 A.2d at 1054.	Although the Environmental Hearing Board (EHB) has some authority in reviewing post-enforcement matters, it does not have the authority to make declaratory judgment and injunctive relief pursuant to the Declaratory Judgment Act, as only courts of record of the Commonwealth have that jurisdiction; the EHB only has jurisdiction to review post-enforcement matters and may not decide a pre-enforcement challenge. 42 Pa.C.S.A. § 7531 et seq.	Does the Environmental Hearing Board (EHB) have the authority to make declaratory judgment and injunctive relief pursuant to the Declaratory Judgment Act within its jurisdiction?	OS0523.docx	LEGALASE-0011724-LEGALASE-0011725	SA, Sub	0.48	0	0	1	1	1
1150	TWA United Greenfield v. N.L.R.B., 637 F.2d 410	23H+1429	Section 8(a)(1) of the National Labor Relations Act, 29 U.S.C. § 158(a)(1), prohibits an employer from interfering with, restraining, or coercing employees in the exercise of their right of inter alia, self-organization, or collective bargaining. It is well established that an employer's conduct is to be determined in light of the totality of the circumstances in which that particular instance of conduct occurred. N.L.R.B. v. Laretto Coca Cola Bottling Co., 633 F.2d 1338, 1342 (5th Cir. 1980); cert. denied, U.S. ___, 101 S.Ct. 246, 661 Ed.2d 115 (1980); N.L.R.B. v. Vero, Inc., 425 F.2d 293, 298 (5th Cir. 1970). "Remarks that may not appear coercive when considered in isolation may take on a different meaning when evaluated with respect to the totality of the circumstances." N.L.R.B. v. Kaiser Aluminum & Chemical Corp., 404 U.S. 149, 154 (1965). N.L.R.B. v. Kaiser Agricultural Chemicals, Div. of Kaiser A. & C. Corp., 473 F.2d 374, 381 (5th Cir. 1973).	Tests determining whether an employer has violated provision of the National Labor Relations Act, 29 U.S.C. § 158(a)(1), require consideration of the totality of the circumstances. An employer's conduct is to be determined in light of the totality of the circumstances in which that particular instance of conduct occurred. N.L.R.B. v. Laretto Coca Cola Bottling Co., 633 F.2d 1338, 1342 (5th Cir. 1980); cert. denied, U.S. ___, 101 S.Ct. 246, 661 Ed.2d 115 (1980); N.L.R.B. v. Vero, Inc., 425 F.2d 293, 298 (5th Cir. 1970). "Remarks that may not appear coercive when considered in isolation may take on a different meaning when evaluated with respect to the totality of the circumstances." N.L.R.B. v. Kaiser Aluminum & Chemical Corp., 404 U.S. 149, 154 (1965). N.L.R.B. v. Kaiser Agricultural Chemicals, Div. of Kaiser A. & C. Corp., 473 F.2d 374, 381 (5th Cir. 1973).	What is the test for determining whether an employer has violated s 8(a)(1) of the National Labor Relations Act?	Labor and Employment - Memo 31 - 1P.docx	ROSS-003284068-ROSS-003284069	Condensed, Order, SA	0.69	1	0	1	1	1
1151	All of Descendants of Texas Land Grants v. United States, 371 So. 1478	14B+1	A claimant under the Fifth Amendment must show that the United States, by some specific action, took a private property interest for a public use without compensation. Therefore, a claim under the Fifth Amendment accrues when that taking action occurs. Steel Improvement & Forge Co. v. United States, 355 F.2d 627, 631, 174 Cl.Cl. 24 (1966).	Does a successful claim for taking under the Fifth Amendment require a showing that the government took a private property interest for public use without paying just compensation?	Does a successful claim for taking under the Fifth Amendment require a showing that the government took a private property interest for public use without paying just compensation?	001460.docx	LEGALASE-00118665-LEGALASE-00118666	Condensed, SA	0.44	0	1	0	1	
1152	Rota-McClary v. Sandimer Consumer USA, 780 F.3d 690	25T+114	Second, in deciding to apply the FAA, we need not identify any specific effect upon interstate commerce, so long as "in the aggregate the economic activity in which the parties were engaged [that particular economic transactions in which the parties were engaged] that would be affected by the outcome of the dispute is substantial enough to warrant federal intervention." No elaborate explanation is needed to make evident the broad impact of commercial lending on the national economy or Congress's power to regulate that activity pursuant to the Commerce Clause. ("Internal citation omitted).	In deciding to apply the Federal Arbitration Act (FAA) to enforce a contractual arbitration provision, court need not identify any specific effect upon interstate commerce, so long as "in the aggregate the economic activity in which the parties were engaged [that particular economic transactions in which the parties were engaged] that would be affected by the outcome of the dispute is substantial enough to warrant federal intervention." No elaborate explanation is needed to make evident the broad impact of commercial lending on the national economy or Congress's power to regulate that activity pursuant to the Commerce Clause. ("Internal citation omitted).	Do the courts need to identify any specific effect upon interstate commerce when applying the Federal Arbitration Act (FAA)?	Alternative Dispute Resolution - Memo 236 - 1P.docx	ROSS-0032937093-ROSS-0032937094	Condensed, SA, Sub	0.65	0	1	1	1	1

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1153	Meer Indus. v. Dow Chem. Co., 608 F.3d 1202	2439+2432	"[A]cting on the advice of counsel is a complete defense to an action for malicious prosecution either of civil or criminal actions." Dual liability Co. v. Smith, 102 Fla. 717, 136 So. 878, 880 (1931). That advice, however, "must be sought in good faith, with the sole purpose of being advised as to the propriety of the action to be taken, and not for the purpose of securing all material facts bearing on the guilt of the accused, the specific proceeding complained of must have been advised by counsel, and the advice must have been acted upon in good faith under the belief that the charge was true."	Advice of counsel, to provide complete defense to malicious prosecution action under Florida law, must be predicated on a full, correct, and fair statement of all material facts bearing on the guilt of the accused, the specific proceeding complained of must have been advised by counsel, and the advice must have been acted upon in good faith under the belief that the charge was true.	Is advice of counsel a defense to malicious prosecution claim?	001811.docx	LEGALCASE-0011895-1 LEGALCASE-0011895-2	Condensed SA, Sub 0.37	0	839	15,344	34,873	21,876	9,029	
	Hill v. Tennessee Valley Auth., 842 F. Supp. 1413	3139+462	FELTICA creates a statutory mechanism which immunizes federal employees from personal liability for common law torts committed within the scope of their employment by transferring those claims against the federal government to the Federal Tort Claims Act (FTCA). The FTCA, which became subject to the limitations of the Federal Tort Claims Act (FTCA), 28 U.S.C. § 1346(b), 2671-80; Springer v. Bryant, 897 F.2d 1085, 1087 (11th Cir.1990). Since TVA employees are not covered by the FTCA, section nine of FELTICA, 16 U.S.C. 831c(7)(B), was added in order to protect TVA employees by requiring the substitution of TVA for an employee named as a party defendant who is certified or proven to be acting within the scope of his or her employment at the time the alleged tortious act occurred. The statute provides that the federal government, under FELTICA, TVA employees must be shown to have acted within the scope of their employment.	The Federal Employees Liability Reform and Tort Compensation Act creates statutory mechanism which immunizes federal employees from personal liability for common-law torts committed within scope of their employment by transferring those claims against the federal government to the Federal Tort Claims Act (FTCA). The FTCA, which became subject to the limitations of the Federal Tort Claims Act (FTCA), 28 U.S.C. § 1346(b), 2671-80; Springer v. Bryant, 897 F.2d 1085, 1087 (11th Cir.1990). Since TVA employees are not covered by the FTCA, section nine of FELTICA, 16 U.S.C. 831c(7)(B), was added in order to protect TVA employees by requiring the substitution of TVA for an employee named as a party defendant who is certified or proven to be acting within the scope of his or her employment at the time the alleged tortious act occurred. The statute provides that the federal government, under FELTICA, TVA employees must be shown to have acted within the scope of their employment.	Are federal employees immune from liability for torts they commit when acting within the scope of their federal employment?	00790.docx	LEGALCASE-0008155-1 LEGALCASE-0008155-2	Condensed SA, Sub 0.48	0	1	1	1	1		
1155	Morrison v. Morrison, 284 Ga. 112	3338H+313	"A cause of action has been defined as being "the entire set of facts which give rise to an enforceable claim. When, at here, some of the facts are known, but others are not, the entire set of facts is not known, the later suit is not upon the same case as the former (id.), although the subject matter may be the same and even though the causes arose out of the same transaction." (Clt), Haley v. Regions Bank, supra. Accordingly, Appellants' "claim of res judicata is without merit."	A cause of action, for res judicata purposes, is the entire set of facts which give rise to an enforceable claim; where some of the operative facts are known, but others are not, the entire set of facts is not known, the later suit is not upon the same case as the former, although the subject matter may be the same, and even though the causes arose out of the same transaction.	"Is a "cause of action deemed to be an entire set of facts that give rise to an enforceable claim?"	Action - Memo 34 - ARG.docx	ROSS-0032396487-RO25-002396489	Condensed SA, Sub 0.29	0	1	1	1	1	1	
	United Servs. Auto. Ass'n v. Alaska Int. Co., 94 Cal. App. 4th 618	364+1	"[E]quitable subrogation permits a party who has been required to satisfy a loss created by a third party's wrongful act to step into the shoes of the third party and pursue recovery from the responsible wrongdoer." In the instant case, the doctrine permits the paying insurer to be placed in the shoes of the insured and to pursue recovery from third parties responsible to the insured for the loss for which the insurer was liable and paid." (Fireman's Fund Ins. Co. v. Maryland Casualty Co. (1994) 21 Cal.App.4th 1586, 1595-1596, 26 Cal.Rptr.2d 762.) Because subrogation rights are purely derivatives, an insurer cannot acquire anything by subrogation to which the insured has no right and can claim	"[E]quitable subrogation" permits a party who has been required to satisfy a loss created by a third party's wrongful act to step into the shoes of the third party and pursue recovery from the responsible wrongdoer.	Is subrogation a right which is purely derivative and it permits a party who has been required to satisfy a loss created by a third party to step into the shoes of the third party and pursue recovery from the responsible wrongdoer?	05134.docx	LEGALCASE-00084208-1 LEGALCASE-00084210	Condensed SA	0	1	0	1	1	1	
1157	Hicks v. Lorde, 107 P.3d 1009	364+26	Ordinarily, when one deed of trust is released, junior lienholders just move up the line in priority. See Western Federal Sav. and Loan Ass'n of Denver v. Ben Gay, Inc., 436 P.2d 121, 123 (1967). However, if the deed of trust has been released due to mistake, it may be restored through equitable subrogation. Id. at 417-12, 416P.2d at 123. A lienholder who successfully invokes the doctrine is called a subrogee. There are five factors that have been traditionally used to determine whether a subrogee is entitled to the benefits of the original mortgage: (1) the subrogee must be a volunteer; (2) the subrogee did not act to protect his or her own interest; (3) the subrogee did not act as a volunteer; (3) the subrogee was not primarily liable for the debt paid; (4) the subrogee paid off the entire encumbrance; and (5) subrogation would not work any injustice to the rights of the junior lienholder." E. Boston Sav. Bank v. Ogan, 428 Mass. 327, 701 N.E.2d 331, 334 (1998) (quoting Mort v. United States, 86 F.3d 880, 894 (9th Cir. 1996)).	Five factors that have been outlined as conditions precedent to the application of equitable subrogation include (1) the subrogee made the application to protect his or her own interest; (2) the subrogee did not act as a volunteer; (3) the subrogee was not primarily liable for the debt paid; (4) the subrogee paid off the entire encumbrance; and (5) subrogation would not work any injustice to the rights of the junior lienholder.	What are the five factors that have been outlined as conditions precedent to the application of equitable subrogation?	Subrogation - Memo # 564 - C - AP.docx	ROSS-003324185-RO25-003324190	SA, Sub	0	0	1	1	1	1	1
	Zurch Am. Ins. Co. v. S-Owens Ins. Co., 248 F. Supp. 341268	364+1	"[E]quitable subrogation is generally appropriate where: (1) the subrogee did not act to protect his or her own interest; (2) the subrogee did not act as a volunteer; (3) the subrogee was not primarily liable for the debt; (4) the subrogee paid off the entire debt; and (5) subrogation would not work any injustice to the rights of a third party." Dade Cnty. Sch. Bd. Bd., 731 So.2d at 644.1. The Court finds ZMC's argument unavailing and to give rise to these elements as a pleading requirement. See American Ins. Co. v. S. Waterproffing, No. 134-cv-154-j-340RK, 2014 WL 4662988, at 10 (M.D. Fla. Sept. 19, 2014) ("A plaintiff must allege [the enumerated] five elements in order to maintain a claim for equitable subrogation"; Columbia Bank v. Turbellio, 143 So.3d 964, 968 (Fla. 1st DCA, 2014) (resolving a motion to dismiss by applying those elements). Additionally, courts have applied these elements to cases arising outside the realm of insurance. See, e.g., American Ins. Co. v. S. Waterproffing, Inc. v. American Ins. Co., 742 So. 2d at 332; DaimlerChrysler Ins. Co. v. Argo Errors, Inc., 63 So.3d 68, 72 (Fla. 4th DCA 2011); Phoenix Ins. Co., 558 So.2d at 1150; Johnson, 18 So.3d at 1100; Morrison Assurance Co., 600 So.2d at 1151. Therefore, the Court finds that ZMC must plead facts regarding these five	Equitable subrogation under Florida law generally is appropriate where: (1) the subrogee did not act to protect his or her own interest; (2) the subrogee did not act as a volunteer; (3) the subrogee was not primarily liable for the debt; (4) the subrogee paid off the entire debt; and (5) subrogation would not work any injustice to the rights of a third party.	% equitable subrogation appropriate where one party voluntarily pays the entire debt of another on which the paying party is not primarily liable in order to protect its own interests, as long as subrogation would not harm the rights of a third party?"	04407.docx	LEGALCASE-00121450-1 LEGALCASE-00121452	SA, Sub	0	0	1	1	1	1	
1158															

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1159	In re Project Homestead, 374 B.R. 193	366-1	In North Carolina, equitable subrogation is a well-established remedy. It is a creature of equity that includes instances in which one party has paid a debt for which another party was primarily liable and which in equity and good conscience should have been discharged by the latter. Wallace v. Benner, 200 N.C. 124, 156 S.E. 795, 798-99 (1931). A party who is permitted to invoke the remedy of equitable subrogation succeeds to all of the rights remedies and security which the party who was paid had against the person whose debt was paid. Trs. of the Garden of Prayer Church v. Geraleco Builders, Inc., 78 N.C.App. 108, 336 S.E.2d 694, 698 (1985). Equitable subrogation, however, "is not an absolute right, but one which depends on the equities and attending facts and circumstances of each case." First Union Nat. Bank v. Lindley Laboratories, Inc., 132 N.C.App. 129, 510 S.E.2d 187, 188 (1999).	"Is equitable subrogation a creature of equity that applies in instances in which one party has paid a debt for which another party was primarily liable, and which in equity and good conscience should have been discharged by the latter?"		04124.docx	LEGALCASE-00121739-LEGALCASE-00121740	Condensed, SA	0.71	889	0	15,344	14,873	21,876	9,029
1160	Potter v. Sauter, 136 Md. App. 383	366-1	The principles of subrogation are important in deciding whether State Auto is a real party in interest. Writing on behalf of the Court of Appeals, Judge Catell recently explained subrogation, stating: "Subrogation is a legal fiction whereby the party who has paid the debt of another is treated as if it is the creditor, and good conscience should have been discharged by the latter. Wallace v. Benner, 200 N.C. 124, 156 S.E. 795, 798-99 (1931). A party who is permitted to invoke the remedy of equitable subrogation succeeds to all of the rights remedies and security which the party who was paid had against the person whose debt was paid. Trs. of the Garden of Prayer Church v. Geraleco Builders, Inc., 78 N.C.App. 108, 336 S.E.2d 694, 698 (1985). Equitable subrogation, however, "is not an absolute right, but one which depends on the equities and attending facts and circumstances of each case." First Union Nat. Bank v. Lindley Laboratories, Inc., 132 N.C.App. 129, 510 S.E.2d 187, 188 (1999).	Is subrogation founded upon the equitable powers of the court? Is it intended to provide relief against loss and damage to a meritorious creditor who has paid the debt of another, and is a legal fiction whereby an obligor has extinguished by a payment made by a third person is treated as still subsisting for the benefit of the third person.		Subrogation - Memo # 729 - C - SA.docx	ROSS-003310613-ROSS-003310614	Condensed, SA	0.75	0	1	0	1	1	
1161	Frymire Eng'g & Co., ex rel. Liberty Mut. Ins. Co. v. Jonar Int'l Ltd., 104 S.W.3d 713	366-1	The doctrine of equitable subrogation "may be invoked to prevent unjust enrichment when one person confers upon another a benefit that is not required by legal duty or contract." Smart v. Tower Land and Inv. Co., 597 S.W.2d 333, 337 (Tex.1980) (emphasis added). By entering into the contract with Price Woods, Frymire voluntarily agreed to pay for any damages caused by its employees or suppliers. Frymire/Liberty concedes that it was the party who paid the debt of another, and good conscience should have been discharged by the latter. Wallace v. Benner, 200 N.C. 124, 156 S.E. 795, 798-99 (1931). A party who is permitted to invoke the remedy of equitable subrogation succeeds to all of the rights remedies and security which the party who was paid had against the person whose debt was paid. Trs. of the Garden of Prayer Church v. Geraleco Builders, Inc., 78 N.C.App. 108, 336 S.E.2d 694, 698 (1985). Equitable subrogation, however, "is not an absolute right, but one which depends on the equities and attending facts and circumstances of each case." First Union Nat. Bank v. Lindley Laboratories, Inc., 132 N.C.App. 129, 510 S.E.2d 187, 188 (1999).	Can the doctrine of equitable subrogation be invoked to prevent unjust enrichment when one person confers upon another a benefit that is not required by legal duty or contract?		04162.docx	LEGALCASE-00121571-LEGALCASE-00121572	Condensed, SA	0.87	0	1	0	1	1	
1162	Universal Forest Prod. E. Div. v. Morris Forest Prod., 558 F. Supp. 2d 893	366-1	Wisconsin recognizes the doctrine of equitable subrogation. Equitable subrogation "rests upon the equitable principle that one, other than a volunteer, who pays for the wrong of another should be permitted to look to the wrongdoer to the extent he has paid and be subject to the defenses of the wrongdoer." Plets v. Reocable Trust of Knapel, 282 Wis.2d 550, 566, 698 N.W.2d 761, 769 (Wis.2005) (quoting Garrity v. Rural Mut. Ins. Co., 77 Wis.2d 537, 541, 253 N.W.2d 512, 514 (Wis.1977)). "A party who is subrogated to a second party's rights against a third party "steps into the shoes of the second party and is entitled to the same rights and remedies that the second party could have brought against the third party." Patients Compensation Fund v. Lutheran Hospital LLC, 233 Wis.2d 439, 451, 588 N.W.2d 35, 39 (Wis.1999).	"Does the doctrine of subrogation rest upon the equitable principle that one, other than a volunteer, who pays for the wrong of another should be permitted to look to the wrongdoer to the extent he has paid and be subject to the defenses of the wrongdoer?"		Subrogation - Memo # 802 - ES.docx	ROSS-00285183-ROSS-00285184	Condensed, SA	0.67	0	1	0	1	1	
1163	In re McCabe Grp., 424 B.R. 1	366-28	"Subrogation is an old term, rooted in equity," which today is used to mean "stand in the shoes of." "[i]t occurs where one party, by virtue of its payment to another's obligation, steps into the shoes of the party who is primarily liable for the debt." In East Boston Savs. Bank v. Ogden, the Supreme Judicial Court of Massachusetts set forth five factors that a court must determine for equitable subrogation to apply: (1) the subrogee made the payment to protect his or her own interest; (2) the subrogee did not act as a volunteer; (3) the subrogee was not primarily liable for the debt paid; (4) the subrogee paid off the entire encumbrance; and (5) whether there is absence of any injustice to rights of the junior lienholder if subrogation is applied.	What are the five factors that courts must consider when deciding whether to apply equitable subrogation?		041948.docx	LEGALCASE-00121448-LEGALCASE-00121449	SA, Sub	0.39	0	0	1	1		

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Between Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
1164	Fordham v. Eason, 351 N.C. 131	386+208	The basis of a trespass to chattel cause of action lies in "injury to person, money, or property." 259 N.C.2d 830, 131 S.E.2d 447, 452 (1985). A plaintiff must demonstrate that she had either actual or constructive possession of the property at the time of the trespass, and that there was an unauthorized, unlawful interference or dispossession of the property. See White v. Morris, 8 N.C. 301, 303 (1821); Carson v. Noland, 4 N.C. 136 (1834), and that there was an unauthorized, unlawful interference or dispossession of the property. See Binder v. General Motors Acceptance Corp., 222 N.C. 512, 515, 23 S.E.2d 894, 896 (1943); Kripstein v. Creditfield, 178 N.C. 346, 350, 100 S.E. 602, 604 (1919); Reader v. Moody, 46 N.C. 372, 374 (1836).	A successful action for trespass to chattel requires the party bringing the action to demonstrate that he had either actual or constructive possession of the property at the time of the trespass, and that there was an unauthorized, unlawful interference or dispossession of the property.	Should the party bringing the action of trespass to chattel demonstrate that they had either actual or constructive possession of the property at the time of the trespass?	04748.docx	LEGALISE-00121302-LEGALISE-00121303	Condensed, SA	0.59	839	15,344	14,873	21,876	9,079
1165	Georgia Power Co. v. Harrison, 253 Ga. 212	307A+1	Although trial courts have discretion pursuant to statute to hear jurisdictional issues in advance of trial, it is a legal discretion which must balance factors favoring pretrial determination of a defense against other circumstances favoring delay, and which generally should not be exercised to consider questions of jurisdiction which are largely contentious with merits of claim. O.C.G.A. § 9-11-12(f). "In exercising this discretion, the court must balance the need to test the sufficiency of the defense or objection and the right of a party to have his litigation against such factors as the expense and delay the hearing may cause, the difficulty or likelihood of arriving at a meaningful result at the hearing, and the possibility that the issue to be decided on the hearing is so intertwined with the merits of the case that a postponement until trial is necessary." Williams & Miller, 200 S.W.2d 705, 706 (Tex. 1948). The determination of the defense will involve going into the merits, the question may well be reargued until trial. The rule is not intended to permit "fragmentary and separate trials of issues that require coherent presentation for their just determination." 2A Moore's, supra, at 3254.	Although trial courts have discretion pursuant to statute to hear jurisdictional issues in advance of trial, it is a legal discretion which must balance factors favoring pretrial determination of a defense against other circumstances favoring delay, and which generally should not be exercised to consider questions of jurisdiction which are largely contentious with merits of claim. O.C.G.A. § 9-11-12(f).	Does the trial court have discretion pursuant to statute to hear jurisdictional issues in advance of trial?	029383.docx	LEGALISE-00122387-LEGALISE-00122388	Condensed, SA	0.71	0	1	0	1	
1166	Kaufman v. Conroy for Lawyer Discipline, 197 S.W.3d 867	307A+3	A motion in limine is a procedural device that permits a party to identify, prior to trial, certain evidentiary issues the court may be asked to rule upon. See Hartford Accident & Indem. Co. v. McCordell, 369 S.W.2d 31, 335 (Tex.1963); Fort Worth Hotel Ltd. P'ship v. Enerch Corp., 977 S.W.2d 746, 757 (Tex.App.-Fort Worth 1998, no pet.). The purpose of such a motion is to prevent opposing parties from asking prejudicial questions and introducing prejudicial evidence in front of the jury without first seeking leave of court. Webster v. Sanchez, 14 S.W.3d 333, 340 (Tex. App.-Austin 2000, no pet.). The granting of the motion is not a final ruling on the evidence. Blane v. Young, 665 S.W.2d 536, 541 (Tex.App.-Corpus Christi 1983, writ ref'd n.r.e.). A ruling on a motion in limine preserves nothing for review. Hartford, 369 S.W.2d at 335 ("In neither case [1] questions not asked or evidence not offered, or [2] questions asked or evidence offered" should be the error of the trial court in overruling the motion in limine be regarded as harmful or reversible error."); Campbell Tractor Co. v. Boyett, 674 S.W.2d 100, 102 (Tex. 1984). The purpose of the motion is to prevent the court's actions in granting or denying a motion in limine from preserving nothing for appellate review"). A judgment will not be reversed unless the evidence is in fact offered. See Acord v. Gen. Motors Corp., 669 S.W.2d 111, 116 (Tex.1984); Hartford, 369 S.W.2d at 335. Thus, to complain on appeal that the trial court erroneously excluded evidence, Kaufman must have offered the evidence during trial and obtained an adverse ruling from the trial court. Udozo v. Villanueva, 377 S.W.3d 496, 501 (Tex.App.-Houston [1st Dist.] 2005, no pet.).	The purpose of a motion in limine is to prevent opposing parties from asking prejudicial questions and introducing prejudicial evidence in front of the jury without first seeking leave of court.	Is the purpose of a motion in limine to prevent opposing parties from asking prejudicial questions and introducing prejudicial evidence in front of the jury without first seeking leave of court?	Perital Procedure - Memo #41 - C - TJ.docx	ROSS-00327402-ROSS-003297403	SA, Sub	0.89	0	0	1	1	
1167	Am. Fid. Fire Ins. Co. v. United States, 385 F. Supp. 1075	220+474	Where stop notices had not been filed with respect to funds which were due from the state of California under public works contract, under California law, surety of defaulting contractor acquired no subrogation rights to the unpaid funds, the funds constituted "property or rights to property" of the contractor, and the contractor was entitled to recover the federal income taxes could attach to the funds. West's Ann.Cal.Civ.Code, §§ 2848, 2849, 2858, 3179 et seq.; 3187, 26 U.S.C.A. (1954) §§ 6821, 6822.	Where stop notices had not been filed with respect to funds which were due from the state of California under public works contract, under California law, surety of defaulting contractor acquired no subrogation rights to the unpaid funds, the funds constituted "property or rights to property" of the contractor, and the contractor was entitled to recover the federal income taxes could attach to the funds. West's Ann.Cal.Civ.Code, §§ 2848, 2849, 2858, 3179 et seq.; 3187, 26 U.S.C.A. (1954) §§ 6821, 6822.	Does the surety of a defaulting contractor acquire subrogation rights to the unpaid funds?	Subrogation - Memo # 900 - C - VA.docx	ROSS-00325315-ROSS-00325316	Condensed, SA, Sub	0	1	1	1	1	
1168	Evans v. Kroh, 284 S.W.2d 329	13+61	Section 237. The pertinent part of the statute is as follows: "(1) Before a debt or liability upon a contract becomes due or matures, an equitable action for indemnity may be brought by a creditor against his debtor, by a creditor against his surety, or by a surety against his principal, to determine the meaning of 'debt or liability' as used in this statute.	Statute which provides that, before a debt or liability upon contract becomes due or matures, an equitable action for indemnity may be brought (1) by creditor against his debtor, (2) by surety against his principal, or (3) by surety against his principal with another for such indebtedness, shall not be construed to deprive the creditor of his right to recover so much of his property that process of court after judgment cannot be executed, is remedial in nature and provides both a right and a remedy, and falls within statutory construction rule which requires a remedial statute granting a right or providing a remedy, to be strictly followed in all respects.	May an equitable action for indemnity may be brought by creditor against his debtor before a debt or liability upon contract becomes due or matures?	005576.docx	LEGALISE-00123905-LEGALISE-00123906	SA, Sub	0.32	0	0	1	1	

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1189	Zidebel v. Bird, 600 S.W.2d 550	24-143	The word "accrue" signifies the date when one having a right of action first becomes legally entitled to apply to a court for relief by a proceeding commenced therein; that is to say, it signifies the date when the plaintiff first becomes entitled to sue the defendant based upon a legal wrong attributed to the latter. In negligence cases generally, the basic rule is that a cause of action accrues when the injury or damage occurs. ¹ Restatement (Second) of Torts § 173(2); see also, e.g., Somner, 139 S.W.2d 223 (Tex.Civ.App.1940, writ ref'd). This basic rule ordinarily applies even if the plaintiff is not aware of his right of action, and, it is said, the basic rule applies "although damage was not sustained until after the commission of the tort." Id. at 224 (emphasis added). For the quoted language to have any meaning at all, it must intend that the basic rule applies even though an injury does not immediately attend the act or omission of which the plaintiff complains.	Word "accrual," for purposes of statute of limitations, signifies date when one having right of action first becomes legally entitled to apply to court for relief by proceeding commenced therein; it signifies date when plaintiff first becomes entitled to sue defendant based on legal wrong attributed to the latter.	"Does a cause of action 'accrue'" when a plaintiff first becomes entitled to file a lawsuit based on a legal wrong attributed to a defendant?"	005586.docx	LEGALASE-00123925- LEGALASE-00123927	Condemn'd, SA, Sub 	0 0.68	839	1 15,344	1 14,873	1 21,876	9,029
1190	Austin v. Abney Mills, 824 So. 2d 137	24+15544)	Adopting the rationale of Cole, we conclude that the "significant tortious exposure" theory for determining when a cause of action accrued in a long-term occupational disease case in which the plaintiff suffers from an illness or disease as when the exposures are "significant and such exposures later result in the manifestation of damages." Cole, 599 So.2d at ¶¶ 10-11. "Tortious exposures are significant where asbestos dust has damaged the body that the fibrogenic effects of its inhalation will progress independently of further exposure." Abdell, p. 17, 784 So.2d at 65. We agree with the Abadie court that such an application of the "significant tortious exposure" theory is a logical variation of and not materially different from the application of the "contractor" theory articulated in Faciane. Therefore, in order to establish when the tort cause of action accrued in this case, we need to determine whether the plaintiff suffered from the disease, the plaintiff must present evidence that the exposures were "significant and such exposures later resulted in the manifestation of damages." Cole, 599 So.2d at 1066.	To establish when the tort cause of action accrued in a long-latency occupational disease case, wherein the plaintiff suffers from the disease, significant and such exposures later result in the manifestation of damages?	Action - Memo #62 - C - UK.docx	ROSS-0028390E-ROSS-0028390F	Condemn'd, SA 	0.77	0	1	0	1	1	1
1191	Brown v. Trans World Airlines, 127 F.3d 537	25+121	While all of these cases were decided under the Federal Arbitration Act, in Austin we applied principles to collective bargaining contracts that had been used before. See, e.g., International Brotherhood of Teamsters v. United States, 431 U.S. 513, 524 n.10, 53 U.S.L.A. ¶ 5,603 et seq.; Civil Rights Act of 1964, § 703 et seq., 42 U.S.C.A. § 2000e et seq. Court is bound to enforce any legally negotiated arbitration clause that obligates parties to submit disputes arising under Title VII of the Civil Rights Act to arbitration!	Court is bound to enforce any legally negotiated arbitration clause that obligates parties to submit disputes arising under Title VI of the Civil Rights Act to arbitration!	Are courts bound to enforce legally negotiated arbitration clauses that obligate parties to submit claims under Title VI of the CHRL Right Act to arbitration?	007109.docx	LEGALASE-00123781- LEGALASE-00123782	SA, Sub 	0.74	0	0	1	1	
1192	Finn v. Dain Bioscience Inc., 648 F. Supp. 337	25+143	Plaintiffs' Courts XI through XII are RICO claims. Until recently, the courts had consistently held that RICO claims are nonarbitrable. See Witt v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 602 F.Supp. 867 (W.D.Pa.1985); Jacobson v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 602 F.Supp. 867(MD Pa.); Jacobson v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 605 F.Supp. 510(W.D.Pa.); 586 F. Supp. 510(MD Pa.) 1984; Universal Marine Insurance Co. v. Beacon Risk Management Corp., No. 13-CV-01004-LTS-JCL Document 1-1 Filed 02/28/14, 2014 WL 928666 (S.D.N.Y. Feb. 28, 2014), aff'd, 756 F.3d 1301 (N.D.Cal.), cert. denied, 135 S.Ct. 660 (U.S. Supreme Ct.). See also O'Neill v. Hilton Hotel Hosp., 115 F.3d 272, 275 (4th Cir.1997) [enforcing agreement to arbitrate claims under the Family Medical Leave Act]. Thus, we are bound to enforce any legally negotiated arbitration clause that obligates parties to submit claims under either Title VII of the Civil Rights Act or the Family and Medical Leave Act to arbitration.	Claims for violation of Race/Lever influenced a nd Corrupt Organizations Act were arbitrable pursuant to arbitration clause in customer margin agreement with stockbroker; declining to follow Witt v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 602 F.Supp. 867(MD Pa.); Jacobson v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 605 F.Supp. 510(W.D.Pa.); 586 F. Supp. 510(MD Pa.) 1984; Universal Marine Insurance Co. v. Beacon Risk Management Corp., No. 13-CV-01004-LTS-JCL Document 1-1 Filed 02/28/14, 2014 WL 928666 (S.D.N.Y. Feb. 28, 2014), aff'd, 756 F.3d 1301 (N.D.Cal.), cert. denied, 135 S.Ct. 660 (U.S. Supreme Ct.). See also O'Neill v. Hilton Hotel Hosp., 115 F.3d 272, 275 (4th Cir.1997) [enforcing pro-arbitration language of several recent Supreme Court decisions]; however, including Byrd, Mitsubishi, and Moses H. Cone Memorial Hospital v. Mercury Construction Corp., 460 U.S. 1, 103 S.Ct. 927, 74 L.Ed.2d 766 (1983).	Are RICO claims arbitrable?	007111.docx	LEGALASE-00123785- LEGALASE-00123787	Condemn'd, SA, Sub 	0 0.77	0	1	1	1	1

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1173	<p><i>Hourani v. Mitchell</i>, 796 F.3d 1</p>	22:1+42	Finally, it bears noting that the Houranis' claims arise under District of Columbia law. Congress has established a local, not federal, law to govern the political behavior of the District of Columbia. The political behavior of the District of Columbia is a sensitive decision to apply defamation law to foreign sovereigns' official communications about events internal to their own territory. Cf. <i>American Insurance Ass'n v. Garamendi</i> , 539 U.S. 396, 425-426, 123 S.Ct. 2374, 156 L.Ed.2d 376 (2003) (noting the relative "weakness" of local governments' interest in policing official foreign government disclosures). Quite the contrary, the Political Branches have expressly determined that foreign sovereigns should enjoy immunity for claims of "libel, slander, or other tortious conduct." <i>Id.</i> , 156 L.Ed.2d at 387-88, 123 S.Ct. at 2376-77. The Act of State doctrine is to promote "international comity, respect for the sovereignty of foreign nations on their own territory, and the avoidance of embarrassment to the Executive Branch in its conduct of foreign relations." Kirkpatrick, 493 U.S. at 408, 110 S.Ct. 701. Those same considerations strongly reinforce the appropriateness of our decision not to tread in an area where the Political Branches have waded the courts off.	The function of the act of state doctrine is to promote international comity, respect for the sovereignty of foreign nations on their own territory, and the avoidance of embarrassment to the Executive Branch in its conduct of foreign relations.	"Does the act of state doctrine promote international comity, respect for the sovereignty of foreign nations on their own territory, and the avoidance of embarrassment to the Executive Branch in its conduct of foreign relations?"	013731.docx	LEGALASE-00123405- LEGALASE-00123410	Condensed SA	0.61	839 0	1 0	15,344 0	21,876 1	9,029
1174	<p><i>Salih v. Bush</i>, 848 F.3d 880</p>	22:1+104	Finally, Plaintiff argues that Defendants cannot be immune under the Westfall Act because she alleges violations of a <i>ius cogens</i> norm of international law. "[A] <i>ius cogens</i> norm, also known as a 'peremptory norm' of international law, 'is a norm accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character, as a sovereign act.'" <i>Id.</i> , 848 F.3d at 890 (quoting <i>Sieroni de Baku v. Argentina</i> , 965 F.2d 699, 714 (9th Cir. 1992)). (quoting Vienna Convention on the Law of Treaties art. 53, May 23, 1969, 1155 U.N.T.S. 332). "Whereas customary international law derives solely from the consent of states, the fundamental and universal norms constituting <i>ius cogens</i> transcend such consent." <i>Id.</i> at 715. "Because <i>ius cogens</i> norms do not depend solely on the consent of states for their binding force, they enjoy the highest status within international law." <i>Id.</i> (internal quotation marks omitted). "International law does not recognize an act that violates <i>ius cogens</i> as a 'sovereign act.'" <i>Id.</i> at 718.	International law does not recognize an act that violates <i>ius cogens</i> , a norm accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character, as a sovereign act.	"Does international law recognize an act that violates <i>ius cogens</i> , a norm accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character, as a sovereign act?"	International Law - Memo #17 - C - LK.docx	R055-003101907-A055- 003301868	Condensed SA, Sub 0.71	0.71	0 1	1 1	1 1	1 1	1
1175	<p><i>In re Vitamin C Antitrust Litig.</i>, 847 F. Supp. 2d 546</p>	22:1+42	The act of state doctrine derives from both separation of powers and respect for the sovereignty of other nations. It holds that the courts of one nation may not sit in judgment of the public acts of another sovereign within its own borders. See <i>Republic of Austria v. Atanasoff</i> , 54 U.S. 677, 700, 124 S.Ct. 2490, 2501 L.Ed.2d 11 (2004). The rationale for the doctrine is that the courts of one nation should not sit in judgment of the public acts of another sovereign state and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory. Redress of grievances by reason of such acts must be obtained through the means open to be availed of by sovereign powers as between themselves.	The act of state doctrine, which derives from both separation of powers and respect for the sovereignty of other nations, holds that the courts of one nation may not sit in judgment of the public acts of another sovereign within its own borders.	Does the act of state doctrine hold that the courts of one nation may not sit in judgment of the public acts of another sovereign within its own borders?	020054.docx	LEGALASE-00123438- LEGALASE-00123440	Condensed SA	0.69	0 1	1 0	1 1	1 1	1
1176	<p><i>Brentkovich v. Chappell</i>, 66 Ohio App. 3d 43</p>	30:7A+3	A motion in limine seeks an anticipatory ruling that evidence will probably be inadmissible, so it should be excluded until the opponent demonstrates its propriety. <i>State v. Maurer</i> (1984), 15 Ohio St.3d 239, 259, 15 OBR 375, 396, 473 N.E.2d 768, 787; <i>Rich v. Quinn</i> (1983), 13 Ohio App.3d 102, 103, 108 B.R. 119, 122, 468 N.E.2d 365, 369. The ability of a trial court to entertain such motions lies in the inherent power and discretion of the trial judge to control the proceedings. <i>Rich</i> , <i>supra</i> .	"Motion in limine" seeks anticipatory ruling that evidence will probably be inadmissible, so it should be excluded until opponent demonstrates its propriety. Ability of trial court to entertain such motions lies in inherent power and discretion of trial judge to control proceedings.	Does the ability of trial court to entertain motions in limine lie with a court's inherent power and discretion to control proceedings before it?	Perital Procedure - Memo #536 - C - CRB.docx	LEGALASE-00031843- LEGALASE-00031844	Condensed SA, Sub 0.42	0.42	0 1	1 1	1 1	1 1	1
1177	<p><i>Souler v. Souler</i>, 248 N.J. Super. 274</p>	30:7A+3	This matter comes before the court by way of defendant's motion in limine for a clarification of the relative burdens that the parties bear when a spouse seeks equitable distribution of the increase in value of a pre-marital asset owned by the other spouse. As a general rule, in limine motions are inappropriate if they require the court to engage in an analysis of credibility or evidence yet to be presented. In such cases, the motions should ordinarily be denied until a sufficient predicate is established.	As a general rule in limine motions are inappropriate if they require the court to engage in an analysis of credibility or evidence yet to be presented, and in such cases, the motions should ordinarily be denied until a sufficient predicate is established.	"Are in limine motions inappropriate if they require the court to engage in an analysis of credibility or evidence yet to be presented, and should the motions ordinarily be denied until a sufficient predicate is established?"	Perital Procedure - Memo #68 - C - VA.docx	R055-003257698-A055- 003257699	Condensed SA	0.69	0 1	1 0	1 1	1 1	1
1178	<p><i>Nelson v. Cyprus Bagdad Copper Corp.</i>, 119 F.3d 756</p>	25:1+132	We conclude that, in line with <i>Lai</i> , the unilateral promulgation by an employer of arbitration provisions in an employee handbook does not constitute a knowing waiver of an employee's right to sue the employer for a tortious act. On the other hand, the unilateral promulgation by an employer of a right to a judicial forum is not waived even though the Handbook is furnished to the employee and the employee acknowledges its receipt and agrees to read and understand its contents. Finally, we hold that the right is not waived even when the employee performs his obligations by commencing or continuing to do his assigned work and accepting a paycheck in return. Accordingly, the district court erred in concluding that there was a valid waiver of Nelson's right to a judicial determination of his ADA claims and in granting summary judgment to the defendants.	Unilateral promulgation by employer of arbitration provisions in employee handbook does not constitute knowing agreement on part of employee to waive statutory remedy provided by civil rights law.	Does an employer's promulgation of an arbitration provision in an employee handbook constitute a knowing agreement on the part of an employee to waive a statutory remedy provided by a civil right law?	007158.docx	LEGALASE-00125557- LEGALASE-00125558	Condensed SA	0.77	0 1	1 0	1 1	1 1	1

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1179	Rasoulzadeh v. Associated Press, 374 F. Supp. 854	22:1-42	The act of state doctrine originated as a bar to suits against foreign governments or their officials, requiring a case-by-case analysis of whether the act was a sovereign act of a foreign government, with respect to conduct of foreign relations, by action before the court.	Application of "act of state" doctrine, barring suits against foreign governments or their officials, requires case-by-case analysis of whether the act was a sovereign act of a foreign government, with respect to conduct of foreign relations, by action before the court.	"Does the act of state doctrine barring suits against foreign governments or their officials require a case-by-case analysis of whether the act was a sovereign act of a foreign government, with respect to conduct of foreign relations?"	020413.docx	LEGALISE-00124766-LEGALISE-00124768	SA, Sub	0.88	0	1	1	21,876	9,079
1180	O.N.E. Shipping Ltd. v. Flora Mercantile Gracindombiana, S.A., 830 F.2d 449	22:1-351	When the causal chain between a defendant's alleged conduct and plaintiff's injury cannot be determined without an inquiry into the motives of the foreign government, claims made under the antitrust laws must be dismissed.	When causal chain between defendant's alleged conduct and plaintiff's injury cannot be determined without an inquiry into the motives of the foreign government, claims made under the antitrust laws must be dismissed.	"When causal chain between defendant's alleged conduct and plaintiff's injury cannot be determined without an inquiry into the motives of the foreign government, must claims made under the antitrust laws be dismissed?"	International Law - Memo # 517 - C - ES.docx	ROSS-003282001-ROSS-003282002	Condensed SA, Sub	0.72	0	1	1	1	1
1181	Hargrove v. Underwriters at Lloyd's, London, 357 F. Supp. 395	1708-2053	A contention that the act of state doctrine is applicable to the case, however, does not direct the Court of subject matter jurisdiction over the matter. Jurisdiction over action, if a court concludes that doctrine is applicable, requires a court to apply the law of the foreign state as the rule of decision when faced with challenges to the official acts of a sovereign government. Krigstad, 493 U.S. at 1406, 110 S.Ct. at 705 ("The act of state doctrine is not some vague doctrine of abstention but a 'principle of decision binding on federal and state courts alike.'") (emphasis original); Ricard v. American Metal Co., Ltd., 246 U.S. 304, 309, 38 S.Ct. 312, 313, 62 L.Ed. 733 (1938) (act of state doctrine requires court to accept the validity of the official acts of a foreign government in its own territory, but does not deprive the court of jurisdiction over the matter"); Ripstein, 101 F.3d at 68 (act of state doctrine is not a surrender or abandonment of authority and to decide accordingly is not a surrender or abandonment of jurisdiction but is an exercise of it."); Collep, 764 F.2d at 1113 (under the act of state doctrine, "courts exercise jurisdiction but decline to decide certain issues."); Thus, the Defendants' contention that the act of state doctrine deprives the Court of subject matter jurisdiction over the Plaintiffs' claims is clearly incorrect. However, if the Court concludes the doctrine is applicable, dismissal of the Plaintiffs' claims may nonetheless be warranted because the Plaintiffs' claims are barred by the act of state doctrine possibility of any relief for an opposing party." Sharone v. Time, Inc., 599 F.Supp. 538, 546 (S.D.N.Y.1984); see also International Assoc. of Machinists and Aerospace Workers v. Organization of the Petroleum Exporting Countries, 649 F.2d 1354, 1361 (9th Cir.1981) (dismissing complaint "where the only remedy sought is barred by act of state consideration."); Collep, 764 F.2d at 1125-26 (denying case where relief sought by the plaintiff was barred by the act of state doctrine).	Although act of state doctrine does not deprive federal court of subject matter jurisdiction over action, if a court concludes that doctrine is applicable, it must apply the law of the foreign state as the rule of decision. If a court concludes that doctrine is applicable, the validity of official acts precludes possibility of any relief for opposing party.	"If a court concludes that the act of state doctrine is applicable, does the validity of official acts preclude possibility of any relief for the opposing party?"	International Law - Memo 530 - In.docx	ROSS-00332323-ROSS-003323252	Condensed SA	0.86	0	1	0	1	1

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences	
1182	World Wide Minerals, Ltd. v. Republic of Kazakhstan, 236 F.3d 1154	22-1342	The act of state doctrine "precludes the courts of this country from inquiring into the validity of the public acts of a recognized foreign sovereign power committed within its own territory." Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 401, 84 S.Ct. 923, 926, 11 L.Ed.2d 804 (1964). It is applicable when "the relief sought or the defense interposed would require a court in the United States to declare invalid the official acts of a foreign sovereign government, its officers, or its agents, or those of a private individual acting in a capacity that is part of the official acts of a foreign sovereign government, its officers, or its agents." Kissick & Co., Inc. v. Environmental Technics Corp., 493 U.S. 400, 405, 110 S.Ct. 701, 704, 107 L.Ed.2d 816 (1990). When it does apply, the doctrine serves as "a rule of decision for the courts of this country." Id. at 405, 110 S.Ct. at 704 (quoting Ricard v. American Metal Co., 246 U.S. 304, 310, 38 S.Ct. 312, 314, 62 L.Ed. 733 (1918)), which requires that, "in the process of deciding [a case], the acts of foreign sovereigns taken within their own jurisdictions shall be deemed valid." Id. at 405, 110 S.Ct. at 704 (quoting The Supreme Court's interpretation of the principle at 704). Although the Supreme Court's interpretation of the principle is not binding on the lower courts, the Court has "the most recently described it "as a consequence of domestic separation of powers, reflecting "the strong sense of the Judicial Branch that its engagement in the task of passing on the validity of foreign acts of state may hinder" the conduct of foreign affairs." Id. at 404, 110 S.Ct. at 704 (quoting Sabbatino, 376 U.S. at 423, 84 S.Ct. at 938). The policies underlying the doctrine include "international comity, respect for the sovereignty of foreign nations on their own territory, and the avoidance of interference with the foreign relations of the United States." Id. at 408, 110 S.Ct. at 705; see id. at 409, 110 S.Ct. at 706-07.	When it applies, the act of state doctrine serves as a rule of decision for the courts of the United States, which requires that, in the process of deciding a case, the acts of foreign sovereigns taken within their own jurisdictions shall be deemed valid.	Does the act of state doctrine serve as a rule of decision for the courts of the United States, which requires courts to deem valid the acts of foreign sovereigns taken within their own jurisdictions?	International Law- Memo # 761 - C-SU.docx	ROSS-003283473-ROSS-003283473	SA, Sub	0.86	839	0	15,344	14,873	21,276	9,029
1183	Dominicus Americana Bank v. Gulf & W. Indus., 473 F.3d 680	22-1342	The allegations that involve acts by Dominican authorities performing irregularly commercial functions present a more difficult problem in order to determine whether the act of state doctrine applies. The act concerned must be a public one such as a legislative enactment, regulatory decree, or executive use of the police powers. See McNelis, Supra at 236-37; Cf. Continental Ore. supra, at 706-07 (corporation acting through agent of foreign government but without government's official approval); act of state (inapplicable). Four members of the Supreme Court concluded in <i>Alfred Dunhill of London, Inc. v. Republic of Cuba</i> , supra, 425 U.S. at 693-95, 706 S.Ct. 854, that conduct related to the operation of a business is not a public act. The Court has also stated that it is problematic whether closing the LaBarranca airport to the plaintiffs, ordering their marina to be dismantled, and retooling the road that would serve Dominicus all acts alleged to have been part of a conspiracy to injure Dominicus' business were acts engaged in pursuant to the police power of the authorities or acts of a commercial nature. It would be inappropriate to make such determinations on the present record without permitting discovery.	To trigger application of the act of state doctrine, the government act concerned must be a public one such as a legislative enactment, regulatory decree, or executive use of the police powers.	To trigger application of the act of state doctrine, should the government act concerned be a public one such as a legislative enactment, regulatory decree, or executive use of the police powers?	020983.docx	LEGALBASE-00214627-LEGALBASE-00214628	Condensed, SA	0.85	0	1	0	1		
1184	Hard v. PETHI, 258 Ga. App. 170	307A+3	A motion in limine is a pretrial motion which may be used in two ways: 1) The movant seeks, not a final ruling on the admissibility of evidence, but only to prevent the mention by anyone, during trial, of a certain item of evidence or area of inquiry until its admissibility can be determined during the course of the trial outside the presence of the jury. 2) The movant seeks a final ruling on the admissibility of evidence. The trial court has an absolute right to refuse to decide the admissibility of evidence, allegedly violative of some ordinary rule of evidence, prior to trial. If, however, the trial court decides to rule on the admissibility of evidence prior to trial, the court's determination of [the] admissibility is similar "to a preliminary ruling on evidence at a pretrial conference" and it "controls the subsequent course of action, unless modified at trial to prevent manifest injustice." <i>Harley Davidson Motor Co. v. Daniel</i> , 244 Ga. 284, 285-86, 260 S.E.2d 20 (1979).	A trial court has an absolute right to refuse to decide the admissibility of evidence, allegedly violative of some ordinary rule of evidence, prior to trial; if, however, the trial court decides to rule on the admissibility of evidence prior to trial, the court's determination of the admissibility is similar "to a preliminary ruling on evidence at a pretrial conference" and it "controls the subsequent course of action, unless modified at trial to prevent manifest injustice." <i>Harley Davidson Motor Co. v. Daniel</i> , 244 Ga. 284, 285-86, 260 S.E.2d 20 (1979).	Is a ruling on the admissibility of evidence prior to trial similar to a preliminary ruling?	Pretrial Procedure- Memo # 832 - C-Ma.docx	ROSS-00312897-ROSS-00312898	Condensed, SA	0.52	0	1	0	1		
1185	Matagorda City v. Texas Ass'n of Cty. Gov't Risk Mgmt. Pool, 975 S.W.2d 782	36-61	However, TAC argues that it is equitably subrogated to the rights of the underlying claimants to recover the amount paid in settlement of the claims against the County. The doctrine of equitable subrogation is given a liberal application and is broad enough to include every instance in which one person, not acting voluntarily, has paid a debt for which another person is primarily liable. <i>McBroom v. Bennett Plumbing, Inc.</i> , 865 S.W.2d at 542 (because carrier may be equitably subrogated to the rights of the insured against the primary carrier to the extent of its primary liability to pay a settlement). <i>McBroom v. Bennett Plumbing, Inc. v. Villa France, Inc.</i> , 515 S.W.2d 32, 36 (Tex.Civ.App. Dallas 1974, writ ref'd n.r.e.). However, the doctrine of subrogation is not applied for the mere stranger or volunteer who has paid the debt of another, without any assignment or agreement for subrogation, without being under any legal obligation to do so. <i>McBroom v. Bennett Plumbing, Inc. v. Villa France, Inc.</i> , 515 S.W.2d at 36. First Nat. Bank of Saunders, 77 Tex. 278, 280, 13 S.W. 1030, 1031 (1890).	Doctrine of "equitable subrogation" is given a liberal application and is broad enough to include every instance in which one person, not acting voluntarily, has paid a debt for which another was primarily liable and which in equity and good conscience should have been discharged by the latter.	Is equitable subrogation broadly applied to include instances in which one person pays a debt for which another is primarily liable?	Subrogation - Memo 981 - C CAT.docx	ROSS-000283843-ROSS-00283850	Condensed, SA	0.76	0	1	0	1		

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1186	Drago v. Thomson Const. Sdps of New York, 4 WCL 3434	367A+3	Either in the alternative or in addition, the challenge may assert some practical difficulty renders it nearly impossible for the court to grant the opinion inquiry is addressed to "the scientific reliability of the procedures." The foundation followed to generate the evidence proffered and whether they establish a foundation for the reception of the evidence at trial" (People v. Wesley, supra, 83 N.Y.2d at 442, 611 N.Y.S.2d 97, 633 N.E.2d 451). Absent a specific pre-trial motion in limine, in the general course, "arguments concerning...a deference to accepted procedures for collection, storage or analysis of such evidence [relate] to trial issues." Four dissenters' weight of authority is given to the majority's conclusion that the evidence is admissible. [3rd Dep't 2001]. Internal quotation marks and brackets omitted. If it is determined the evidence is admissible, the weight of the evidence is a question for the trier of fact (People v. Middleton, 54 N.Y.2d 42, 51, 444 N.Y.S.2d 581, 429 N.E.2d 100 [1981]).	Absent a specific pre-trial motion in limine, in the general course, arguments concerning deference to accepted procedures for collection, storage or analysis of such evidence [relate] to trial issues. The weight of authority is given to the majority's conclusion that the evidence is admissible, the weight of the evidence is a question for the trier of fact.	"Absent a specific pre-trial motion in limine, is the weight of the evidence a question for the trier of fact?"	Pretrial Procedure - Memo # 813 - C - 3A.docx	005-002286945-0055-003286946	SA, Sub	0.66	839	15,344	14,873	21,876	9,079
1187	Aulman v. United Bank of Crawford, 239 Ga. 237	366F+11	Aulman follows up his first argument by asserting that even if Stuckler was primarily responsible to the payee, extrajudicial debt and the security was automatically released. Ordinarily, payment which extinguishes the debt is that made at or after maturity by one who is the principal debtor. Stuckler was, in fact, obligated to the bank in a primary sense. However, in this dispute between his estate and Aulman, his position relative to Aulman, that of an accommodator surety, may be established. See Division 1, supra. And it is that relationship which dictates the application of the rule adopted in the case of the creditor. O.C.G.A. § 10-2-57 provides: "If a surety who has paid the debt of his principal shall also be entitled to be substituted in place of the creditor as to all securities held by him for the payment of the debt." This provision is consistent with the rule adopted by most states and applies whether the security is real or personal property. See Rylander v. Sheffield, 108 Ga. 111, 115, 34 S.E. 348 (1899). See also Hall v. Myers, 90 Ga. 674, 682, 16 S.E. 653 (1892) and O.C.G.A. § 10-2-56.	Rule that surety who has paid debt of principal is entitled to be substituted in place of the creditor as to all securities held by him for payment of debt applies whether security is real or personal property. O.C.G.A. § 10-2-57.	Is the rule that a surety who has paid the debt of a principal is entitled to be substituted in place of the creditor as to all securities held by him for payment of debt applies whether security is real or personal property?	Subrogation - Memo # 891 - C - 3A.docx	005-002286947-0055-003286948	Condensed, SA	0.81	0	1	0	1	
1188	Duke v. City of Lafayette, 713 N.E.2d 269	348+274+11	This is not to say that municipalities may infringe upon the property interests of private citizens with impunity. Our precedents, and today's holding, clearly indicate that where a governmental entity violates restrictive covenants in furtherance of a public use or purpose, that violation is a taking for which compensation must be paid. Although injunctive relief may be necessary to remedy interference with a homeowner's rights for a private purpose, when an alleged taking occurs for a public purpose, the government is not required to provide compensation unavailable as a matter of law where an action for compensation can be brought subsequent to the taking. Again, we make no determination as to whether there was a taking in this instance. However, to the extent there was a taking, an inverse condemnation action provides the proper remedy.	Although injunctive relief may be necessary to remedy governmental interference with landowner rights for a private purpose, equitable relief is generally unavailable as a matter of law to remedy an alleged taking for a public purpose if an action for compensation can be brought subsequent to the taking. U.S.C.A. Const. Amendments, 5, 14.	"Is equitable relief available where an alleged taking occurs for what is clearly a public purpose, as a matter of law where an action for compensation can be brought subsequent to the taking?"	07566.docx	LEGALASE-00125852-LEGALASE-00125853	Order, SA, Sub	0.6	1	0	1	1	1
1189	United States v. Rozas, 134 F.3d 121	22+321	Reading also argues that applying the "death result" provision to this case would be inconsistent with the principle of international law which states that is, its ability to render its law applicable to persons or activities outside its borders; states may only exercise jurisdiction to prescribe under a limited number of theories. See Restatement (Third) of Foreign Relations Law § 401 (1987). This case, however, clearly falls within at least one such theory, the so-called "passive personality principle." That principle "asserts that a state may apply law particularly criminal law" to an act committed outside its territory by a person who is a national of the state at the time of the act. See Restatement (Third) of Foreign Relations Law § 402 cmt. g (1987). "The principle has not been generally accepted for ordinary torts or crimes, but it is increasingly accepted as applied to terrorist and other organized attacks on a state's nationals by reason of their nationality...." Id. Scarlett Rogenkamp was a United States citizen, and there was abundant evidence that she was chosen as a victim because of her nationality. This suffices to support jurisdiction on the passive personality theory.	International law imposes limits on a state's ability to render its law applicable to persons or activities outside its borders. International law is applicable to persons or activities outside its borders? Restatement (Third) of Foreign Relations Law § 401.	Does international law impose limits on a state's ability to render its law applicable to persons or activities outside its borders?	005678.docx	LEGALASE-00125992-LEGALASE-00125998	Condensed, SA	0.79	0	1	0	1	
1190	In re Stroud Oil Properties, 110 S.W.3d 18	13+41	Accordingly, a cause of action to quiet title accrues when: (1) any "instrument not void on its face that purports to convey any interest in or make any charge upon the land of a true owner, the invalidity of which would require proof" is executed; or (2) when a person acquires title to real property which appears to be subject to a previously-executed instrument of this type. Stroud's cause of action accrued when it obtained title to the property in question. Stroud's cause of action accrued subsequent thereto, including Predator's execution of a disclaimer, are not pertinent to the venue inquiry. See Tex. Civ. Prac. & Rem. Code Ann. § 15-006.	A cause of action to quiet title accrues when: (1) any instrument not void on its face that purports to convey any interest in or make any charge upon the land of a true owner, the invalidity of which would require proof is executed, or (2) when a person acquires title to real property which appears to be subject to a previously-executed instrument of this type.	When does a cause of action to quiet title accrue?	005563.docx	LEGALASE-00126546-LEGALASE-00126547	Condensed, SA	0.45	0	1	0	1	
1191	City & Cty of San Francisco v. Mun. Court, 167 Cal. App. 4d 722	21+45	The provisions in support of the inspection warrants specified both the state and city code sections authorizing RAP and described the standards for inspection set forth therein. They also incorporated by reference the provisions of the Penal Code which govern the issuance of warrants for inspection. Under the provisions of the Penal Code, the city police department is authorized to issue inspection warrants for inspection of properties in designated areas. U.S.C.A. Const. Amend. 4, West's Ann. Cal. C.P. § 51.822.50 et seq., 1822.51, 1822.52; West's Ann. Cal. Health & Safety Code §§ 37910 et seq., 37922(a, c).	Affidavit in support of inspection warrants pursuant to city habilitation assistance program, which specified authorizing state and city code sections and described inspection standards and which incorporated by reference the provisions of the Penal Code which govern the issuance of warrants for inspection. Under the provisions of the Penal Code, the city police department is authorized to issue inspection warrants for inspection of properties in designated areas. U.S.C.A. Const. Amend. 4, West's Ann. Cal. C.P. § 51.822.50 et seq., 1822.51, 1822.52; West's Ann. Cal. Health & Safety Code §§ 37910 et seq., 37922(a, c).	Does an affidavit in support of inspection warrant provide probable cause for the issue of a search warrant?	019494.docx	LEGALASE-00126591-LEGALASE-00126592	Condensed, SA, Sub	0.2	0	1	1	1	1

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1192	Jones v. Cont'l Can Co., 286 Kan. 547	41.3+1155	Having gone the full circle in the wake of the many legislative changes, we're back to the original question for determining if, which is substantial, the Act for methods of its administration, rules and methods provided by Code of Civil Procedure not included in Act itself are not available in determining rights thereunder. K.S.A. 44-501, et seq.	Workers' Compensation Act undertakes to cover every phase of right to compensation and of procedure for obtaining it, which is substantial, complete and exclusive?"	"Does the Workers' Compensation Act (WCA) undertake to cover every phase of the right to compensation and of the procedure for obtaining it, which is substantial, complete and exclusive?"	048931.docx	LEGALSE-00126722- LEGALSE-00126723	Condensed, SA, Sub	0.38	839	15,344	14,873	21,876	9,079
1193	Sawright v. Am. Gen. Inv. Servs., 507 F.3d 967	25+134(3)	Notably absent from Sawright's brief is a discussion of the "knowing and voluntary waiver" requirement established by this circuit in Morrison v. Circuit City Stores, Inc., 317 F.3d 646 (6th Cir. 2003) (en banc). In Morrison, the court applied "ordinary contract principles in determining whether a binding arbitration agreement that included a waiver of a right to sue in court was valid. Id. at 668 (citing Adams v. Philip Morris, Inc., 67 F.3d 380, 388 (6th Cir. 1995)). In determining whether an employee's resignation and voluntary "waived the right, the court stated that the plaintiff had to consider whether to sign the waiver, including whether the employee had an opportunity to consult with a lawyer; (3) the clarity of the waiver; (4) consideration for the waiver; as well as (5) the totality of the circumstances.	In determining whether an employee knowingly and voluntarily waived the right to sue employee pursuant to arbitration agreement, the court considers: (1) employee's experience, background, and education; (2) the amount of time the employee had to consider whether to sign the waiver, including whether the employee had an opportunity to consult with a lawyer; (3) the clarity of the waiver; (4) consideration for the waiver; as well as (5) the totality of the circumstances.	How do courts evaluate whether an employee has knowingly and voluntarily waived the right to sue in court?	007197.docx	LEGALSE-00127213- LEGALSE-00127214	SA, Sub	0.73	0	0	1	1	1
1194	Byers v. Labor & Indus. Review Comm'n, 208 Wis. 2d 386	41.3+1284	The WCA provides an alternative to tort liability, making employers strictly liable for injuries encompassed within the Act, but limiting the liability to compensation established by statute. County of La Crosse, 182 F.3d 1048, 1055 (9th Cir. 1999). See also, County of La Crosse v. A.O. Smith Corp., 260 Wis. 405, 450 W.2d 11 (1993). In County of La Crosse, the court stated that the plaintiffs are assured smaller but more certain recoveries than might be available in tort actions, while employers are freed from the risk of large and unpredictable damage awards. The court has recently stressed that courts must "exercise care to avoid upsetting the balance of interests achieved by the WCA." Weiss v. City of Milwaukee, 208 Wis. 95, 102, 559 N.W.2d 588, 591 (1997) (citing County of La Crosse, 182 Wis.2d at 30, 513 N.W.2d 579).	Workers' Compensation Act (WCA) provides an alternative to tort liability, limiting employer's liability to compensation established by statute. W.S.A. 102.03(2).	"Does the Workers' Compensation Act (WCA) provide an alternative to tort liability, making employers strictly liable for injuries encompassed within the Act, but limiting liability to compensation established by statute?"	048931.docx	LEGALSE-00126871- LEGALSE-00126872	Condensed, SA, Sub	0.72	0	1	1	1	1
1195	United States v. Hawaii City, 473 F. Supp. 261	11+465	As a general principle, "a court is to apply the law in effect at the time it renders its decision, unless doing so would result in manifest injustice or there is statutory direction or legislative history to the contrary." Bradley v. Richmond School Board, 416 U.S. 696, 711, 94 S.Ct. 2006, 2016, 40 Fed. Cl. 476 (1974). United States v. Fresno Unified School District, 592 F.2d 1088, 1095 (9th Cir. 1979). A court's considerations "relative to the parties, (b) the nature of their rights, and (c) the nature of the impact of the change in law upon those rights." 416 U.S. at 717, 94 S.Ct. at 2019. In Fresno Unified School District, the Court of Appeals for the Ninth Circuit applied the considerations enunciated in Bradley in holding that the provisions of an executive order issued after suit was filed could be applied retroactively to confer standing on the United States Attorney General to sue under Title VII.	Generally, a court is to apply a law in effect at the time it renders its decision unless doing so would result in manifest injustice or there is statutory direction or legislative history to the contrary.	Should a court apply the law in effect at the time it renders its decision unless doing so would result in manifest injustice or there is statutory direction or legislative history to the contrary?	000212.docx	LEGALSE-00127276- LEGALSE-00127277	SA, Sub	0.8	0	0	1	1	1
1196	Lanquet Lumber Co. v. Joyce, 405 N.W.2d 423	307A+501	If a case is to be dismissed during trial for reasons relating to its substantial illegitimacy, this must be done on motion of a party, either the plaintiff or the defendant. Under subparagraph (2) of Rule 41.02, after plaintiff rests, the defendant may move (much like a motion for a directed verdict in a jury trial) for dismissal on the grounds that plaintiff has shown "no right to relief." If granted, the dismissal is on the merits unless the court otherwise specifies. Plaintiff may seek to avoid this conclusive effect by showing that the defendant has not presented sufficient available evidence to prove a fact essential to recovery" and ask instead that the requested dismissal be without prejudice. See Usher v. Alstare Ins. Co., 300 Minn. 52, 238 N.W.2d 201, 205 (1974). Furthermore, at any time during the trial, plaintiff may move under subparagraph (2) of Rule 41.01 for a dismissal without prejudice by showing that some technical failure of proof, correctable if the case were to be re-sued, is about to defeat her otherwise meritorious claim. See Core v. West v. West, 405 N.W.2d 423, 429 (Minn. 1987). The law favors cases being decided on their true merits. [Whether a dismissal without prejudice will be granted and on what terms, is a matter to be presented on motion to the trial court, which then must weigh the reasons given for the requested nonsuit against any prejudice to the other litigants.	Whether dismissal without prejudice will be granted and on what terms is a matter to be presented on motion to trial court, which then must weigh reasons given for requested nonsuit against any prejudice to other litigants. 48 M.S.A., Rules Civ.Proc., Rule 41.01(2).	"Is the question of whether dismissal without prejudice will be granted and on what terms a matter to be presented on motion to a trial court, which then must weigh reasons given for requested nonsuit?"	Perital Procedure - Memo # 1142 - C - T1.docx	ROSS-00328647-ROSS-00328648	Condensed, SA	0.82	0	1	0	1	1

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	Jones v. Multi-Color Corp., 100 Ohio App. 3d 388	41:3+1	We do not agree with appellees that by virtue of R.C. 4123.01(C)(3), Jones's injury is in the course of an arising out of employment. If we were to follow this interpretation, which would remove such injuries from the workers' compensation system, employees injured in recreational activities could sue their employers for common-law negligence, and in the event of a fatal injury, dependents could bring wrongful death claims. Such an interpretation is completely at odds with the entire workers' compensation scheme. . . . * * * The Act [R.C. Chapter 4123] operates as a balance of mutual compromise between the interests of the employer and the employee whereby employees relinquish their common law remedy and accept lower benefit levels coupled with the greater assurance of recovery and employees give up their common-law defenses and are protected from unlimited liability. R.C. 4123.01, et seq.	Workers' Compensation Act operates as a balance of mutual compromise between interests of employers and employees whereby employees relinquish their common-law remedy and accept lower benefit levels coupled with the greater assurance of recovery and employees give up their common-law defenses and are protected from unlimited liability. R.C. 4123.01, et seq.	Does the Workers' Compensation Act operate as a balance of mutual compromise between the interests of employers and employees?	048467.docx	LEGALISE-00127358- LEGALISE-00127359	SA, Sub	0.65	839 0	15,344 0	14,873	21,876 1	9,029
1197														
	U.S. ex rel. Krueger v. Kinsella, 137 F. Supp. 806	34+1	The reason for such a broad grant of court-martial jurisdiction in time of war is obvious. It is essential that the operations of an army in the field be undisturbed by the acts of any person, whatever his status. Even if the Constitution were silent on the subject, military commanders in the field of war would nevertheless have the usual and necessary court-martial powers by virtue of the law of war itself. Congress having been granted in the Constitution, art. 1, § 8, the powers to "declare War" and to "raise and support Armies," as well as to "make Rules for the Government and Regulation of the land and naval Forces," the last mentioned power, insofar as it is to operate in time of war, is referable to the others, and is co-extensive in scope with the law of war under which court-martial jurisdiction is permitted over certain classes of civilians. <i>Madsen v. Kinsella</i> , 1952, 343 U.S. 341, 72 S.Ct. 699, 96 L.Ed. 988	In time of war, constitutional authority to make rules for government and regulation of land and naval forces is co-extensive with the law of war, and permits extending court-martial jurisdiction over certain classes of civilians. U.S.C.A. Const. art. 1, § 8.	Does the constitutional authority to make rules for government and regulation of land and naval forces permit extending court-martial jurisdiction over certain classes of civilians?	008320.docx	LEGALISE-00128606- LEGALISE-00128607	Condensed, SA, Sub	0.72	0	1	1	1	1
1198														
	Evan v. Hardison Law Firm, 465 S.W.3d 124	307A-501	A voluntary nonsuit to dismiss is an action without prejudice must be followed by an order of voluntary dismissal signed by the court and entered on the court's docket. The date of entry of the order will govern the running of pertinent time periods. <i>Tenn. R. Civ. P. 41.01(1)</i> [emphasis added]. Consequently, "[a] plaintiff's right to voluntary dismissal without prejudice is subject to the exceptions expressly stated in Rule 41.01(1) as well as to an implied exception which prohibits nonsuit when it would deprive the defendant of some vested right," <i>Lacy v. Cox</i> , 52 S.W.3d 480, 787, 790 [Tenn. 1975]. In addition, a plaintiff is further limited to taking no more than two nonsuits without prejudice, <i>Tenn. R. Civ. P. 41.01(2)</i> , and nonsuit cannot be taken more than one year after an initial dismissal. As long as none of these exceptions and limitations serve to restrict dismissal, Rule 41.01(1) affords a plaintiff the free and unrestricted right to voluntary dismissal without prejudice before the jury retires. <i>Ricketts v. Sexton</i> , 533 S.W.2d 233, 294 [Tenn.1976]. <i>Lacy</i> , 52 S.W.3d at 484. Thus, <i>Hurdston</i> situations a voluntary nonsuit may be taken as a matter of right, and the plaintiff is not bound to take a nonsuit if the plaintiff is not in pending." <i>Creeveger v. Baptist Health Systems</i> , 974 S.W.2d 699, 700 [Tenn.Ct.App.1997] [emphasis added]. The Tennessee Supreme Court has also held that "under a proper set of circumstances, the Court has the authority to permit a voluntary dismissal, notwithstanding the pendency of a motion for summary judgment." <i>Stewart v. University of Tennessee</i> , 519 S.W.3d 991, 993 [Tenn.1974].	A plaintiff's right to voluntary dismissal without prejudice is subject to the exceptions expressly stated in the rule of civil procedure governing voluntary dismissal as well as to an implied exception which prohibits nonsuit when it would deprive the defendant of some vested right?	Is a plaintiff's right to voluntary dismissal without prejudice subject to an implied exception which prohibits nonsuit when it would deprive the defendant of some vested right?	039317.docx	LEGALISE-00128265- LEGALISE-00128266	SA, Sub	0.81	0	0	1	1	1
1199														
	Fox v. Hinderliter, 222 S.W.3d 154	307A-508	The Hinderlites argue that their notice of nonsuit was immediately effective because the only motion pending at the time Fox's motion to dismiss was not a "claim for affirmative relief." In order for a defensive pleading to qualify as a claim for affirmative relief, the pleading must allege "a cause of action, independent of the plaintiff's claim, on which the plaintiff may obtain his cause of action." <i>See Tenn. R. Civ. P. 41.01(1)</i> . Although the plaintiff may abandon his cause of action or fail to establish it, "BIP Petroleum Co., Inc. v. Millard", 800 S.W.2d 838, 841 [Tenn.1990]. Fox's motion to dismiss seeks a statutory remedy of dismissal with prejudice, and an award of attorney's fees and costs, based on the inadequacy of Dr. Dollinger's expert report. <i>See Tex. Civ. Prac. & Rem.Code Ann. - 74.351(b)</i> [Vernon Supp.2006]. As such, Fox's motion to dismiss does not allege an independent "cause of action" on which he could recover regardless of whether the Hinderliter abandoned or failed to prove its cause of action. Fox's motion to dismiss is therefore not qualify as a "claim for affirmative relief" under Rule 41.01(1).	Should a claim for affirmative relief allege a cause of action independent of the plaintiff's claim upon which the claimant could recover compensation even if the plaintiff is unable to establish his cause of action?	Should a claim for affirmative relief allege a cause of action independent of the plaintiff's claim upon which the claimant could recover compensation even if the plaintiff is unable to establish his cause of action?	039245.docx	LEGALISE-00128352- LEGALISE-00128353	Condensed, SA, Sub	0.57	0	1	1	1	1
1200														

ROW	Judicial Opinion	WMS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
1201	Negaubauer v. Great N. Ry. Co., 22 Min. 184	13+63	This is an appeal by the plaintiff from an order of the district court of the county of Stearns sustaining defendant's demurrer to the complaint. The here material allegations of this complaint are to the effect that on January 13, 1859, Joseph Negaubauer, the minor son of the plaintiff, was killed by the negligence of the defendant in the state of Montana, killed by the negligence of the defendant, that the law of the state of Montana is in force at the time of the death of the plaintiff's son provide that an action to recover damages for the death of one caused by the wrongful act or neglect of another must be commenced within three years; that a father may maintain an action for the death of a minor child, when such death is caused by the wrongful act or neglect of another, and such damages may be given as, under all the circumstances, may be just. It appears from the return hereon that this action was commenced more than two and less than three years after the death of the minor. The defendant demurs to the complaint on the ground that the statute of three years, or the Minnesota limitation of two years, as provided by section 9913, Gen. St. 1894, applies to this action. The cause of action alleged in the complaint did not exist at common law, which gave no right of action for the death of a person caused by the wrongful act or neglect of another. Scheffer v. Ry. Co., 32 Min. 125; 19 N. W. 656. If, then, the plaintiff has or ever had a cause of action for the death of his child by the alleged wrongful act or neglect of the defendant, it is solely by virtue of the statute of three years. Now, it is well settled that where by statute a right of action is given which did not exist at common law, and the statute giving the right also fixes the time within which the right may be enforced, the time so fixed becomes a limitation of the right, and will control, no matter in what forum the action is brought.	Where by statute a right of action is given which did not exist at common law, and the statute giving the right also fixes the time within which the right may be enforced, the time so fixed becomes a limitation or condition upon the right?"	065193.docx	LEGALASE-00128764- LEGALASE-00128765	15,344	1	0	1	0	1	21,276	9,029
1202	Burry & Son Homebuilders v. Ford, 310 S.C. 529	307A+517.1	Generally, plaintiff is entitled to a voluntary nonsuit without prejudice as a matter of right unless legal prejudice is shown by defendant or important issues of public policy are present; once legal prejudice is found, granting or denial is within discretion of trial court. <i>Juliet City Proc., Inc. v. Ruten 419 P.2d 1131.</i>	Generally, plaintiff is entitled to a voluntary nonsuit without prejudice as a matter of right unless legal prejudice is shown by defendant or important issues of public policy are present; once legal prejudice is found, granting or denial is within discretion of trial court. <i>Juliet City Proc., Inc. v. Ruten 419 P.2d 1131.</i>	Is a plaintiff entitled to a voluntary nonsuit without prejudice as a matter of right unless there is a showing of legal prejudice to a defendant?	Pretrial Procedure - Memo # 1143 - C-11.docx	ROSS-000387661+K055-003287662	Condensed, SA	0.62	0	1	0	1	1
1203	Allstate Ins. Co. v. Eagle-Picher Indus., 410 N.W.2d 324	413+6	The rights afforded by the Workers' Compensation Act are incidents of the employment relationship and are contractual in nature. <i>Miller v. Norris Creameries, 311 Minn. 343, 250 N.W.2d 161 (1976); Hagberg v. Colonial & Pacific Freightways, Inc., 279 Minn. 396, 157 N.W.2d 331 (1968).</i> The liability of the employer to pay compensation benefits clearly does not depend on whether the employee does or does not have a cause of action against a third party. The employer's liability exists in many events, including those in which the employee is negligent, negligent in the course of employment, regardless of anyone's negligence. <i>Minn.Stat. § 176.02.1, subd. 1 (1986).</i> Furthermore, the extent of the employer's obligation under the Workers' Compensation Act is not determined according to the common law measure of damages. E.g., <i>Minn.Stat. § 176.10.1, 176.102 (1986).</i>	Liability of employer to pay compensation benefits does not depend on whether employee does or does not have cause of action against third party, but exists in any event where injury, including occupational disease, arose out of and in course of employment, regardless of anyone's negligence. <i>M.S.A. § 176.02.1, subd. 1.</i>	Does the liability of employer to pay workers' compensation benefits depend on whether the employee has a cause of action against a third party?	045853.docx	LEGALASE-00128694- LEGALASE-00128695	Condensed, SA	0.63	0	1	0	1	1
1204	Conf'l Cak. Co. v. Ann. Nutrl Bank & Tr. Co. of Chicago, 329 Ill. App. 686	177H+421	In essence, a drawer who owes no debt to the bank writes a check payable to the bank's order; the drawer places that check in the bank's custody with the expectation that the bank will negotiate the check according to the drawer's wishes. Therefore, a bank may not treat the check as bearer paper and blindly disburse the proceeds according to the instructions of any individual who happens to present the check to the bank. <i>Mutual Service Casualty Ins. v. Elizabeth State Bank, 265 F.2d 601, 613-14 (7th Cir. 2001).</i>	When a drawer who owes no debt to the bank writes a check payable to the bank's order, the drawer places that check in the bank's custody with the expectation that the bank will negotiate the check according to the drawer's wishes; therefore, a bank may not treat the check as bearer paper and blindly disburse the proceeds according to the instructions of any individual who happens to present the check to the bank.	Should a check made payable to a bank be treated according to the wishes of the drawer or be treated as bearer paper?	005957.docx	LEGALASE-00129020- LEGALASE-00129021	Condensed, SA	0.2	0	1	0	1	1
1205	Madison Acquisition Grp., LLC v. 7634 Fourth Real Estate Dev., 134 A.3d 683	307A+512	That branch of its motion which was pursuant to CRP 321.71(b) to discontinue the action insofar as asserted against K'nall. "In general, absent a showing of special circumstances a motion for a voluntary discontinuance should be granted without prejudice" (<i>American Tr. Ins. Co. v. Roberson, 114 A.D.3d 821, 821, 980 N.Y.S.2d 778</i>). However, where, as here, the matter has been submitted to the court, "the court may not order an action discontinued except upon the stipulation of all parties appearing in the action." <i>McKenney's CRP 321.71(b).</i>	In general, absent a showing of special circumstances, a motion for a voluntary discontinuance should be granted without prejudice, but where the matter has been submitted to the court, the court may not order an action discontinued except upon the stipulation of all parties appearing in the action. <i>McKenney's CRP 321.71(b).</i>	"When the matter has been submitted to the court, will the court order an action discontinued except upon the stipulation of all parties appearing in the action?"	024481.docx	LEGALASE-00129516- LEGALASE-00129517	Condensed, SA	0.63	0	1	0	1	1

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1222	Jones v. Bouaz, 7 Mich. App. 561 1301	413+6	"Under the workmen's compensation law, the common-law theories of negligence, contributory negligence, negligence of fellow employee and assumption of risk, were virtually done away with in return for speedy compensation to an injured employee and practically exclusive liability under the statute of the employer." (Footnote omitted)	Workmen's compensation law abolishes common-law theories of negligence, contributory negligence, negligence of fellow employee and assumption of risk and provides for speedy compensation to injured employee and practically exclusive liability of the employer. M.C.L.A. § 4111, et seq.	"Did the Workmens Compensation Law abolish the common-law theories of negligence, contributory negligence, negligence of fellow employees, and the assumption of risk, as well as provide for speedy compensation to injured employees and practically exclusive liability of the employer?"	047852.docx	LEGALCASE-00132886- LEGALCASE-00132887	Condensed SA, Sub 0.16	0	839	15_344	34,873	21,876	9,029
1223	Shapell Indus. v. Superior Court, 132 Cal. App. 4th 1101	102+196	It is true that "[f]ollowing entry of a dismissal of an action by a plaintiff under Code of Civil Procedure section 58(a), a "trial court is without jurisdiction to act further in the action [other than] except for the limited purpose of awarding costs and statutory attorney's fees." (Harris v. Billings, 139S) 16 Cal.App.4th 1396, 1340, 20 Cal.Rptr.2d 713.) The court went on to hold that the trial court had no jurisdiction over the parties' ". . . [t]he voluntary agreement entered into between the parties." (Casa de Valley View Owner's Ass'n. v. Stevenson(1985) 167 Cal.App.3d 1182, 1192, 213 Cal.Rptr. 790)" (Harris v. Billings, supra, 16 Cal.App.4th at p. 1, 1405, 20 Cal.Rptr.2d 718. See also Lohmes v. Astron Computer Products (2001) 94 Cal. App.4th 1150, 1154, 115 Cal.Rptr. 2d 34.	Following entry of a dismissal of an action by a plaintiff, a trial court is without jurisdiction to act further in the action except for the limited purpose of awarding costs and statutory attorney's fees. West's Ann.Cal.C.C.P. § 58A.	"Following entry of a dismissal of an action by a plaintiff, is a trial court without jurisdiction to act further in the action except for the limited purpose of awarding costs and statutory attorney's fees?"	028259.docx	LEGALCASE-00133616- LEGALCASE-00133617	Condensed SA	0.7	0	1	0	1	
1224	United States v. Terry, 707 F.3d 607	65+111	It was a difficult choice not to add a new element to their criminal statute but the signal that the Supreme Court must have meant that the rule would be made in connection with an agreement, which is to say, "In return for official actions under it. So long as a public official agrees that payments will influence an official act, that suffices. What is needed is an agreement, full stop, which can be formal or informal, written or oral. As most bribery agreements will be oral and informal, the question is one of inferences taken from what the participants say, mean and do, all matters that juries are fully equipped to assess." (Robles and Contreras, not cited.) The court concluded that the defendant had not entered an agreement to accept a bribe, and the free of fact is "quite capable of deciding the intent with which words were spoken or actions taken as well as the reasonable construction given to them by the official and the payer." Evans v. United States, 504 U.S. 255, 274, 112 S.Ct. 1, 188 L, 119 L.Ed.2d 57 (1992) (Kennedy, J., concurring in part and concurring in the judgments; see also McCormick, 500 U.S. 412-70, 111 S.Ct. 1807 ("[w]hen a public official enters into an agreement to refrain from performing his duties for the benefit of another person in exchange for some consideration from commerce political and business activities"); United States v. Wright, 665 F.3d 560, 569 (3d Cir.2021) ("We rely on the good sense of jurors...to distinguish intent from knowledge or recklessness where the direct evidence [of a quid pro quo] is necessarily scanty").	What are the keys for determining whether a public official entered into an agreement to accept a bribe?	What are the keys for determining whether a public official entered into an agreement to accept a bribe? spoken or actions taken as well as the reasonable construction given to them by the official and the payer. 18 U.S.C.A. § 201(b)(2).	011235.docx	LEGALCASE-00134079- LEGALCASE-00134080	SA, Sub	0.78	0	0	1	1	
1225	Sheehan v. New Mex. Life Ins. Co., 44 S.W.3d 389	302+23.1	Factors that should be considered in deciding whether to allow leave to amend a petition are (1) hardship to the moving party if leave is not granted; (2) reasons for failure to include any new matter in earlier pleadings; (3) timeliness of the application; (4) the possibility of an amendment curing any inadequacy of the moving party's pleading; and (5) injustice resulting to the party opposing the motion, should it be denied. YZA, 2015 WL 53,333 (D.N.M. 5/29/15). The court stated that the withdrawal of admissions resulting from a party's failure to respond to requests for admissions, party seeking withdrawal of admissions is required to establish that the admitted requests either could have been refused on trial of the issues at admissible evidence having a modicum of credibility, or that the admitted requests were incredible on their face, and that the denial being tendered to the court was justified. The court found that the defendant failed to meet its burden of showing that the admitted requests were incredible on their face, and that the denial being tendered solely for purposes of delay. West's G.O.C. 4th ¶ 9-11-26(6).	What are the factors that should be considered in deciding whether to grant leave to amend a pleading?	What are the factors that should be considered in deciding whether to grant leave to amend a pleading?	Pleading - Memo 301-RMW.docx	ROSS-00303724-ROZ5-	SA, Sub	0.89	0	0	1	1	
1226	Fox Run Properties v. Murray, 285 Ga. App. 568	307+4+86	We agree with Fox Run that the conduct of its attorneys did not warrant the trial court's denial of its motion to withdraw. This, however, is not the relevant inquiry. See Turner v. Mine, 280 Ga.App. 256, 258(1), 63 S.E.2d 641 (2006); Intersouth Properties, 199 Ga.App. at 728(1), 405 S.E.2d 764. Rather, in order to show that the presentation of the merits of this case would be subverted by the withdrawal, Fox Run was required to establish that "the admitted requests either could have been refused on trial of the issues at admissible evidence having a modicum of credibility, or that the admitted requests were incredible on their face, and that the denial being tendered to the court was justified." Whiteman's Contractors v. Wells, 249 Ga. 194, 195, 288 S.E.2d 198 (1992); Intersouth Properties, 199 Ga.App. at 728(1), 405 S.E.2d 764. This Fox Run has failed to do.	If the burden of proof on the subject matter of the request for admission is on the requestor, is the amount required to show the admitted request?"	If the burden of proof on the subject matter of the request for admission is on the requestor, is the amount required to show the admitted request?"	028793.docx	LEGALCASE-00134639- LEGALCASE-00134640	SA, Sub	0.36	0	0	1	1	
1227	Masey v. Haupp, 632 P.2d 824	307+4+86	When the admissions are offered into evidence they become subject to all pertinent objections to admissibility which may be interposed. In addition, pursuant to Rule 36(b), U.R.C.P., the court may permit withdrawal or amendment of the admissions when the presentation of the merits of the action will be subverted thereby and the party who obtained the admissions fails to satisfy the court that withdrawal or amendment of the admissions would prejudice him in maintaining his defense on the merits. Rules of Civil Procedure, Rule 36(b).	Does a trial court have discretion to permit withdrawal or amendment of admissions when presentation of merits of action will be subverted and party obtaining admissions fails to satisfy court that he will be prejudiced in maintaining his defense on the merits. Rules of Civil Procedure, Rule 36(b).	Does a trial court have discretion to permit withdrawal or amendment of admissions when presentation of merits of action will be subverted and party obtaining admissions fails to satisfy court that he will be prejudiced in maintaining his defense on the merits. Rules of Civil Procedure, Rule 36(b).	028988.docx	LEGALCASE-00134743- LEGALCASE-00134744	Condensed SA, Sub 0.32	0	1	1	1	1	
1228	Hess v. Hess, 679 N.E.2d 153	307+4+716	The unexpected and untimely withdrawal of counsel does not necessarily entitle a party to a continuance, but denial of continuance based on withdrawal of counsel may be error when the moving party is free from fault and his rights are likely to be prejudiced by the denial. Id.	Does the unexpected and untimely withdrawal of counsel entitle a party to a continuance, but denial of continuance based on withdrawal of counsel may be error when the moving party is free from fault and his rights are likely to be prejudiced by the denial?"	Does the unexpected and untimely withdrawal of counsel necessarily entitle a party to a continuance, and is the denial of continuance based on withdrawal of counsel error if the moving party is free from fault and his rights are likely to be prejudiced by the denial?"	032919.docx	LEGALCASE-00135257- LEGALCASE-00135258	Condensed SA	0.07	0	1	0	1	
1229	Baron v. Baron, 941 So. 2d 1233	307+4+715	Myers v. Singer, 903 So.2d 1241, 1242 (Fla. 5th DCA 2006) (internal citations omitted). It is generally reversible error to refuse to grant a motion for continuance when the movant has shown that the physical or financial condition of the movant renders him unable to present adequate representation of the party's case.	It is a reversible error to refuse to grant a motion for continuance when the movant has shown that the physical or financial condition of the movant renders him unable to present a fair and adequate presentation of the party's case?"	It is a reversible error to refuse to grant a motion for continuance when the movant has shown that the physical or financial condition of the movant renders him unable to present a fair and adequate presentation of the party's case?"	032920.docx	LEGALCASE-00135117- LEGALCASE-00135118	Condensed SA	0.69	0	1	0	1	

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1230	<i>Progressive Life Ins. Co. v. Hagbound</i> , 35 Ga. App. 231.	307A+716	Postponement of trial on account of absence of counsel who is engaged in trial of case in court of different circuit, without leave, lies in discretion of court. Postponement for such cause is not favored. Code 1933, § 58-3413.	Postponement of trial on account of absence of counsel who is engaged in trial of case in court of different circuit, without leave, lies in discretion of court. Postponement for such cause is not favored. Code 1933, § 58-3413.	"Does postponement of trial on account of absence of counsel who is engaged in trial of case in court of different circuit, without leave, lie in discretion of a court, and a postponement for such cause not favored?"	Pretrial Procedure - Memo 43360 - C- MS.docx	ROSS-003312084	Condensed, SA, Sub 0	0	1	15,344	14,873	21,876	9,079
1231	<i>Wm. T. Thompson Co. v. Gen. Nutrition Corp.</i> , 293 F. Supp. 1443.	170D+1616.1	This Court possesses an inherent power to sanction litigants for abusive litigation practices that are taken in bad faith. <i>Roadway Express, Inc. v. Piper</i> , 447 U.S. 752, 100S.Ct. 2455, 65 L.Ed.2d 488 (1980); <i>Link v. Wallau Railroad Co.</i> , 370 U.S. 626, 625 Ct. 1386, 8 L.Ed.2d 734 (1962); <i>Cham v. National Heritage Life Insurance Co.</i> , 617 F.2d 1328 (9th Cir. 1981).	While litigation is under no duty to keep or retain every document in its possession once a complaint is filed, it is under duty to preserve what it knows, or reasonably should know, is relevant in the action, is reasonably calculated to lead to the discovery of admissible evidence, is reasonably likely to be requested during discovery, and/or is subject of pending discovery request.	Does the law impose upon litigants a duty to preserve evidence which they know or should know is relevant in the action or is reasonably likely to be requested during discovery?	029325.docx	LEGALASE-00135616-LEGALASE-00135617	Condensed, SA	0.69	0	1	0	1	
1232	<i>Kesinger Hunter Mgmt. Co. v. Davis</i> , 782 S.W.2d 426.	307A+716	Before 1947, Missouri courts held that, where counsel is a member of the legislature, the correct filing of a request for continuance with supporting affidavits is a matter of course. <i>State v. Clark</i> , 214 Mo.App. 536, 262 S.W.2d 350, 195 S.W.2d 106 (1946); <i>State v. Myers</i> , 352 Mo. 335, 179 S.W.2d 1344; <i>State v. Clark</i> , 214 Mo.App. 536, 262 S.W.2d 350, 195 S.W.2d 106 (1946); <i>State v. Myers</i> , 352 Mo. 335, 179 S.W.2d 1344; <i>The Missouri Supreme Court changed the trial court's duty in Kyger v. Koerper</i> , 355 Mo. 772, 207 S.W.2d 46 (1947). Kyger, in a concurring opinion supported by a majority of the court, held that a trial court may exercise discretion when an attorney-legislator requests a continuance pursuant to Rule 65.06. Id. 207 S.W.2d at 49. The filing of a continuance request by an attorney-legislator is not subject to the court's jurisdiction and precludes further proceedings. <i>Toddy v. Stokes</i> , 588 Mo. 452, 215 S.W.2d 464, 466 (1948). When an attorney-legislator is attending a session of the general assembly and he has filed a motion for a Rule 65.06 continuance, the trial court may determine whether his presence is necessary to a fair and proper trial. Kyger, 207 S.W.2d at 49; <i>Toddy</i> , 215 S.W.2d at 466. If it is, the continuance will be granted. Concluding statements in an affidavit that an attorney-legislator's presence is necessary for a fair and proper trial, filed to support a Rule 65.06 motion for continuance, are not sufficient to establish that such an alleged showing need for a continuance. Kyger, 207 S.W.2d at 48.	When attorney legislator is attending session of general assembly and he has filed motion for legislative continuance, trial court may determine whether his presence is necessary to a fair and proper trial. If it is, continuance will be granted. V.A.M.R. 65.06.	"When attorney legislator is attending session of general assembly and he files a motion for continuance, can the trial court determine whether his presence is necessary to a fair and proper trial?"	Pretrial Procedure - Memo 43369 - C- VP.docx	ROSS-00329086-ROSS-00329087	Condensed, SA, Sub 0.83	0	1	1	1	1	1
1233	<i>Wibbels v. Unick</i> , 229 Neb. 184.	307A+479	This court has recognized and adopted the rule that a party's failure to make a timely and appropriate response to a request for admission is conclusively established unless, on motion, the court permits withdrawal of the admission. In <i>Sa gent Feil & Grain v. Anderson</i> , 236 Neb. 421, 422, 344 N.W.2d 59, 60 (1986), this court, construing Neb. Rev.Stat. " 25"1,367.41 (Reissue 1979), the statutory forerunner of Rule 36, stated: "A failure to appropriately respond within the time allotted to a properly served request for admission of facts constitutes an admission of facts sought to be elicited [Citations omitted]." When the district court heard the request for admission of facts, it denied the request and the parties thereafter proceeded to trial. The court found no longer subject to controversy in the action. See, also, <i>Madden v. Valley Bank of Union County</i> , 221 Neb. 227, 229, 375 N.W.2d 907, 909 (1985); matters admitted pursuant to Rule 36 are "conclusively and unequivocally established." See, further, <i>Altria Cit. & Surety Co. v. Nielsen</i> , 217 Neb. 297, 348 N.W.2d 851 (1984); <i>Kislinger v. School District No. 49</i> , 163 Neb. 33, 77 N.W.2d 67 (1956); <i>Mueller v. Shucklett</i> , 156 Neb. 881, 38 N.W.2d 141 (1953); <i>In Re Bang v. Broderick & Jackson</i> , 148 Neb. 881, 38 N.W.2d 141 (1953). In <i>Bang v. Broderick & Jackson</i> , the court placed the burden upon a party to whom requests are directed to take some affirmative action, either by response to the requests or by objecting thereto if any ground he has."	Party's failure to make timely and appropriate response to request for admission constitutes admission of subject matter of request, which is conclusively established unless, on motion, the court permits withdrawal of the admission. Sup Ct Rules, Discovery Rule 36.	"Does a party's failure to make a timely and appropriate response to a request for admission constitute an admission of facts sought to be elicited? If so, what action, if any, on motion, the court permits withdrawal of the admission?"	029698.docx	LEGALASE-00135348-LEGALASE-00135349	Condensed, SA	0.84	0	1	0	1	
1234	<i>Schwarz v. Platte Valley Farming, 238 Neb. 841.</i>	307A+483	We have held that a party's failure to make a timely and appropriate response to a request for admission is conclusively established unless, on motion, the court permits withdrawal of the admission. <i>Wibbels v. Unick</i> , 229 Neb. 184, 426 N.W.2d 244 (1988). Rule 36 is not self-executing, but requires that a party, claiming another party's admission by failure to respond properly to a request for admission, must prove service of the request for admission and the served party's failure to answer or object to the request and must subsequently offer the request for admission. <i>Mason State Bank v. Skutumpah</i> , 238 Neb. 361, 461 N.W.2d 517 (1990). Thus, if the necessary foundational requirements are met and there is no motion to withdraw an admission, a trial court is obligated to give effect to the provisions of rule 36.	Rule governing requests for admissions is not self-executing, but requires proof of service of request for admission by the requesting party and the served party's failure to answer or object to the request and must subsequently offer the request for admission as evidence. Discovery Rule 36.	"Must a party that seeks to claim another party's admission by failure to respond properly to a request for admission prove service of the request for admission and the served party's failure to answer or object to the request and must also offer the request for admission as evidence?"	Pretrial Procedure - Memo 43357 - C- MS.docx	ROSS-00329487-ROSS-00329488	Condensed, SA, Sub 0.68	0	1	1	1	1	1

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences	
1235	Jackson v. Newdight, 302 Ga. App. 767	307A+483	Jackson nonetheless asserts on appeal that there remain pending affirmative defenses and counterclaims that she asserted in her answer filed in the Dekalb County court. They include allegations that Nembeght failed to provide her with proper notice of her rights pursuant to OCGA § 10-1-36; failed to notify her of its intended disposition of the vehicle pursuant to OCGA § 11-9-611; failed to care for and/or dispose of the collateral in a commercially reasonable manner; breached the notice provisions of the contract; and failed to mitigate damages. Each of Jackson's asserted claims and defenses, however, are encompassed by her admissions. And matters deemed admitted pursuant to OCGA § 9-1-136 "become solemn admissions in judicial and are conclusive as a matter of law on the matters stated and cannot be contradicted by other evidence unless the admissions are withdrawn or amended on formal motion." Stephens, 302 Ga.App. at 387, 690 S.E.2d 225. See Colvard v. Mosley, 270 Ga.App. 106, 110, 605 S.E.2d 438 (2004); Pullie Home Corp. v. Woodland Nursery, etc., 230 Ga.App. 455, 455-456(1), 496 S.E.2d 546 (1998); Wuritzer Co. v. Watson, 207 Ga.App. 361, 364-165(2), 427 S.E.2d 555 (1993); Abitua v. Farmers, etc., Bank, 159 Ga.App. 406, 407(1), 283 S.E.2d 632 (1981).	Matters deemed admitted, as a result of a party's failure to respond to requests for admission, become solemn admissions in judicial and are conclusive as a matter of law on the matters stated and cannot be contradicted by other evidence unless the admissions are withdrawn or amended on formal motion. West's Ga.Code Ann. § 9-1-36.	Does matters deemed admitted become solemn admissions in judicial and are conclusive as a matter of law on the matters stated and cannot be contradicted by other evidence unless the admissions are withdrawn or amended on formal motion?	Perital Procedure - Memo # 3689 - C-03.docx	ROSS-00332112-ROSS-003332113	SA, Sub	0.74	0	839	1	14,873	21,876	9,029
	In re Estate of Manuel, 187 Cal. App. 4th 100	307A+485	Her respondent's brief on appeal, Wilson never attempts to argue to the contrary. Instead, she suggests that the award against Attorney Jewell and Attorney Clark Johnson should be upheld as a sanction for misuse of the discovery process under Code of Civil Procedure section 203.010, et seq.23 We disagree. Wilson's motion sought costs of proof under Code of Civil Procedure section 203.010, et seq.24 Wilson's motion sought sanctions against counsel, none of the statutorily itemized types of conduct which constituted misuses of discovery, explicitly included denying a request for admission without a reasonable ground to believe the party could prevail on the matter, executor never identified any specific conduct as misuse of discovery under the statute, and the trial court never found that attorneys misused discovery or advised that contestant did so. West's Ann.Cal.C.C.P. §§ 203.010, 203.020, 203.020.	Award against will contestant's attorneys in the amount of all legal fees executor incurred after the date of contestant's denial of requests for admission could not be upheld as a sanction for misuse of the discovery process; executor's motion sought costs of proof for failure to admit the truth of matter when requested to do so and did not seek misuse of discovery sanctions against counsel. Types of conduct which constituted misuses of discovery, explicitly included denying a request for admission without a reasonable ground to believe the party could prevail on the matter, executor never identified any specific conduct as misuse of discovery under the statute, and the trial court never found that attorneys misused discovery or advised that contestant did so. West's Ann.Cal.C.C.P. §§ 203.010, 203.020, 203.020.	"Does a "reasonable ground" for denying a request for admission, as would preclude a costs of proof award, mean more than a hope or a roll of the dice?"	029920.docx	LEGAL/ASE-00135661-LEGAL/ASE-00135663	Condensed, SA, Sub	0.29	0	1	1	1	1	1
1237	Beauv. Bexco, 2015-09/06/06, 203 So. 3d 488	307A+485	Furthermore, the trial court is required to allow the introduction of "all admissible evidence" when an attorney fee is claimed. La. R.S. § 333.98; La. Civ. P. art. 4472. The trial court has wide discretion in determining whether to award attorney's fees based on a party's failure to prove the truth of a matter that is later proved to be genuine. Matthews v. Matthews, 2015/4/99 (La App. 5 Cir., 12/31/15), 184 So.3d 173, 180.	The trial court has wide discretion in determining whether to award attorney's fees based on a party's failure to admit the truth of any matter that is later proved to be genuine. La. Code Civ. Proc. Ann. art. 1472.	Does the court have wide discretion in determining whether to award attorney's fees based on a party's failure to admit the truth of any matter that is later proved to be genuine?	030015.docx	LEGAL/ASE-00136856-LEGAL/ASE-00136857	SA, Sub	0.57	0	0	1	1	1	
	Hutchinson v. Hutchinson, 2015-09/06/06, 203 So. 3d 419	307A+724	Where a motion for a continuance is made on the ground that a material witness is absent, it is no error to overrule a motion for continuance. Where a motion for a continuance is made on the ground that a material witness is absent and due diligence has been exercised to procure the attendance of the witness, that the testimony of the witness is material; that the same facts cannot be proved by any other witnesses in attendance; that the movant cannot safely go to trial in the absence of such witness; and that there is likelihood of procuring the attendance of the witness, or his deposition, if the case is continued. State v. Jones, supra; Dimmy v. Railroad Co., 27 W.Va. 32, 53 Am.Rep. 292; Tompkins v. Burgess, 2 W.Va. 67, 10 Am.Rep. 309. The absence of such showing, it is no error to overrule a motion for continuance.	One moving for continuance on ground that a material witness is absent and due diligence has been exercised to procure the attendance of the witness, that testimony is material, that same facts cannot be proved by any other witnesses in attendance, that movant cannot safely go to trial in the absence of such witness, and that there is likelihood of procuring the attendance of the witness or his deposition if the case is continued. Code, 56-6-7.	"Is a motion for continuance, based on the absence of a material witness, and due diligence has been exercised to procure the attendance of the witness, and that the same facts cannot be proved by any other witness in attendance?"	Perital Procedure - Memo # 3977 - C-03.docx	LEGAL/ASE-00026513-LEGAL/ASE-00030314	Condensed, SA	0.39	0	1	0	1	1	
1239	Erie Ins. Exch. v. Jones, 238 Va. 10	307A+485	Rule 41.2(d) provides that a trial court shall award attorney's fees and expenses to a party who is put to the necessity of proof by his opponent's failure to admit the truth of a matter when requested pursuant to Rule 41.1, unless the party failing to admit has a reasonable ground to believe that he might prevail on the matter. In this case, the trial court awarded the appellee, Herald forms, attorneys' fees of \$635,227 and expenses of \$10,000. The trial court's award was proper, because of the latter's failure to make certain in requested admissions.	Award of attorney fees and expenses to party who was put to necessity of proof by opponent's failure to admit truth of matters contained in requests for admission was abuse of discretion; requests for admission did not conform to necessary standards of clarity and fairness, and opponent was at risk of conceding away a disputed point by such admission. Supp.C.Rules, Rules 41.1, 41.2(d).	"Is the awarding of attorney fees and expenses to a party who was put to necessity of proof by opponent's failure to admit truth of matters contained in requests for admission, an abuse of discretion?"	Perital Procedure - Memo # 4143 - C-VP.docx	ROSS-00328972-ROSS-00338973	Condensed, SA, Sub	0.32	0	1	1	1	1	1
1240	Brooks v. Am. Broad. Co., 179 Cal. App. 3d 500	307A+485	The degree to which the party making the denial has attempted in good faith to reach a reasonable resolution of the matters involved is also an appropriate factor to be weighed. For example, in at least two federal cases the parties making denials of requests for admission had offered to stipulate to the matters requested for admission, but the stipulations were not accepted. In those circumstances, it was later held that there had been good reasons for the denials. (Pearce v. General Am. Life Ins. Co. (8th Cir.1980) 637 F.2d 536, 546; Breffort v. I Had A Ball Company (S.D.N.Y.1967) 271 F.Supp. 623, 629.) We agree that this is an appropriate factor to be considered. (Ct. Cal. Rules of Court, rule 3.9) [Duty of counsel to make reasonable efforts to resolve disputed discovery issues with opposing counsel]]	Degree to which party making denial of requested admission has attempted in good faith to reach reasonable resolution of matter involved is also appropriate factor to be weighed in determining whether such party had no good reason for denial so as to warrant imposition of costs. West's Ann.Cal.C.C.P. § 203.04(c).	"Will the degree to which party making denial of requested admission has attempted in good faith to reach reasonable resolution of matter involved, be an appropriate factor to be weighed in determining whether such party had no good reason for denial?"	Perital Procedure - Memo # 4181 - C-SIG.docx	ROSS-00329174-ROSS-003291742	Condensed, SA, Sub	0.55	0	1	1	1	1	1

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1241	Georgia Gas Co. v. Campbell, 268 S.W. 854	307A-720	We do not understand that a party to a suit, when he has notice that a pleading is to be filed injecting a new issue, is to be required to wait until the new issue is presented, and that by declining to meet the new issue thus presented, and by his own mind that he has not sufficient time to make such defense, obviate the necessity of taking some step to indicate his good faith and belief in the probable existence of such defensive testimony. This is a question for the trial court to pass on. It certainly devolves on such party to exercise some degree of diligence in making some effort to secure the testimony he hopes to secure, and not to wait until the case is called, and then ask the trial court to grant him until another term to take such steps.	When party has notice that amended pleading is to be filed injecting a new issue, he must exercise some degree of diligence in making some effort to secure the testimony he hopes to secure, and not to wait until the case is called, and then ask the trial court to grant him until another term to take such steps?	"Should a party exercise some degree of diligence in making some effort to secure the testimony he hopes to secure, and not to wait until the case is called, and then ask the trial court to grant him until another term to take such steps?"	030827.docx	LEGALCASE-0013737-2 LEGALCASE-0013737-8	Condensed, SA, Sub	0.66	839 0	15,344 1	14,873 1	21,876 1	9,079 1
1242	Romano v. Steelcase Inc., 30 Misc. 34426	307A-316.1	Plaintiffs, who place their physical condition in controversy, may not shield from disclosure material which is necessary to the defense of an action (see: Hoeging v. Westphal, supra). Accordingly, in an action seeking damages for personal injuries, discovery is generally permitted with respect to materials that may be relevant both to the issue of damages and to the issue of causation. See, e.g., A.D.47, 755, 64 N.Y.S.2d 31 (2 Dep. 1984) (including a plaintiff's claim for loss of enjoyment of life (see: Orlando v. Richmond Precast Inc., 53 A.D.3d 534, 861 N.Y.S.2d 765 (2 Dep. 2008)) (in an action to recover damages for personal injuries, records sought were material and necessary to the defense regarding plaintiff's claim of loss of enjoyment of life); Vainali v. City of New York, 276 A.D.2d 789, 715 N.Y.S.2d 422 (2 Dep. 2000); Moran v. St. Vincent's Catholic Med. Ctr., 8 Misc.3d 868, 300 N.Y.S.2d 296 (3d Dep. Ct. W. Co. 2005)).	In an action seeking damages for personal injuries, discovery is generally permitted with respect to materials that may be relevant both to the issue of damages and the extent of a plaintiff's injury including a plaintiff's claim for loss of enjoyment of life. McKinney's CLR 310L.	Is discovery generally permitted with respect to materials that can be relevant both to the issue of damages and the extent of a plaintiff's injury including a plaintiff's claim for loss of employment of life?	Pertrial Procedure - Memo # 4598 - C-55.docx	LEGALCASE-0002753-5 LEGALCASE-0002753-6	Condensed, SA, Sub	0.71	0 1	1 1	1 1	1 1	1 1
1243	Ymir v. Two Men & a Truck, 282 Neb. 692	307A-474	We have held that a party's failure to make a timely and appropriate response to a request for admission constitutes an admission by that party of the subject matter of the request, unless, on motion, the court permits withdrawal of the admission. See City of Ashland v. Ashland Salvage, 271 Neb. 362, 711 N.W.2d 861 (2006). See, also, Conley v. Brauer, 278 Neb. 508, 772 N.W.2d 345 (2009). We have recognized that a party's failure to respond to a request for admission constitutes an admission which results from a party's failure to answer or object to a request for admission. City of Ashland v. Ashland Salvage, supra; Macon State Bank v. Sclutera, 238 Neb. 361, 461 N.W.2d 517 (1990). We have noted, however, that Rule 36 is not self-executing. Thus, a party that seeks to claim another party's admission, as a result of that party's failure to respond properly to a request for admission, must prove service of the request for admission and the served party's failure to answer or object to the request for admission and the served party's failure to answer or object to the request for admission. City of Ashland v. Ashland Salvage, supra. The necessary foundational requirements are met and no motion is sustained to withdraw an admission, a trial court is obligated to give effect to the provisions of Rule 36 which require that the matter be deemed admitted. City of Ashland v. Ashland Salvage, supra; Schwarz v. Platte Valley Estimating, 238 Neb. 841, 606 N.W.2d 85 (2000).	Rule governing requests for admissions is not self-executing, and thus a party that seeks to claim another party's admission, as a result of that party's failure to respond properly to a request for admission, must prove service of the request for admission and the served party's failure to answer or object to the request for admission and the served party's failure to answer or object to the request for admission as evidence. Neb. Ct. R. Dkt. 5-6-33b.	"Is the rule governing requests for admissions self-executing and does it require a party, claiming another party's admission, to by failure to respond properly to a request for admission, to offer the request for admission as evidence?"	031400.docx	LEGALCASE-0013734-7 LEGALCASE-0013734-8	SA, Sub	0.72	0 0	0 0	1 1	1 1	1 1
1244	Dresser Indus. v. Solito, 668 S.W.2d 893	307A-91	It is well settled that a writ of mandamus may issue to correct a clear abuse of discretion. See West v. Solito, 563 S.W.2d 240 (Tex.1978); Marecus v. Marks, 362 S.W.2d 999 (Tex.1962); Crane v. Tunks, 160 Tex. 382, 328 S.W.2d 434 (1959). In cases such as the one before us involving international parties and witnesses, the potential for abuse in the discovery process is very great. The trial judge must be especially sensitive to the fact that the parties are not in the same geographical location and taking the depositions, in our case, Williamson briefed has filed with this court a copy of a 200 hundred page deposition of A.G. Belgast. Belgast, an employee of Dresser Europe, S.A., works in London. While in Houston on business his deposition was taken. We have read the deposition and gleaned very little, if any, information relevant to the controversy. If this deposition is any indication of the information Williamson hopes to elicit from the other foreign witnesses he seeks to depose, we seriously question the need for the deposition.	In cases involving international parties and witnesses the potential for abuse of discovery is great and the trial judge must be especially sensitive to the actual need for request of depositions and alternative means of taking the depositions. Vernon's Am. Texas Rules Civ Proc., Rules 186b, 201, 201, subds. 4, 5.	"In cases involving international parties and witnesses, is the potential for abuse of discovery is great and the trial judge must be especially sensitive to the actual need for request of depositions and alternative means of taking the depositions. Vernon's Am. Texas Rules Civ Proc., Rules 186b, 201, 201, subds. 4, 5.	031533.docx	LEGALCASE-0013738-4 LEGALCASE-0013738-5	Condensed, SA	0.71	0 1	0 1	0 0	1 1	1 1
1245	Maddox v. Stone, 174 Md. App. 489	307A-747.1	The rule requiring the entry of scheduling orders was intended to promote the efficient management of the trial court's docket, not to erect additional opportunities for a court to dismiss meritorious claims for lack of strict compliance with arbitrary deadlines, in the quest to achieve greater judicial efficiency through the use of case management techniques such as scheduling orders, the court must not lose sight of the fact that the parties are not in the same geographical location and taking the depositions, in our case, Williamson briefed has filed with this court a copy of a 200 hundred page deposition of A.G. Belgast. Belgast, an employee of Dresser Europe, S.A., works in London. While in Houston on business his deposition was taken. We have read the deposition and gleaned very little, if any, information relevant to the controversy. If this deposition is any indication of the information Williamson hopes to elicit from the other foreign witnesses he seeks to depose, we seriously question the need for the deposition.	The rule requiring the entry of scheduling orders is intended to promote the efficient management of the trial court's docket, not to erect additional opportunities for a court to dismiss meritorious claims for lack of strict compliance with arbitrary deadlines. Md Rule 2-504.	Is the rule requiring the entry of scheduling orders intended to promote the efficient management of the trial court's docket, not to erect additional opportunities for a court to dismiss meritorious claims for lack of strict compliance with arbitrary deadlines. Md Rule 2-504.	Pertrial Procedure - Memo # 5046 - C-54B.docx	ROSS-00291182-A055-003291183	SA, Sub	0.54	0 0	1 1	1 1	1 1	1 1
1246	Feldman v. Miller, 106 N.Y.S.2d 684	307A-91	I am unable to find Sec. 2388 language, expressed or implied, which authorizes the court to require a party to submit to an examination by the other party relative to matters not "necessary and material to the prosecution of his (the examiner's) defense or counterclaim." (Italics mine.) I think I see it. The law, Sec. 2388, is intended to provide a means by which, in whole or in part, would defeat an attempted fraud, nor did it intend to require the innocent to provide the other party with "the way out" of an inconsistent situation by a disclosure of proof for in advance of the trial for such uses as he may make thereof. The statute is not narrow in scope. It provides ample room for trial preparation. Let us refrain from rendering it an instrument of mischief, if not injustice.	The deposition procedure was never intended to remove a weapon which would defeat an attempted fraud, nor to require the innocent to provide the other party with the way out of an inconsistent situation by disclosure of proof for in advance of trial for such uses as he may make thereof. Civil Practice Act, § 2388.	Is the deposition procedure never intended to remove a weapon which would defeat an attempted fraud, nor to require the innocent to provide the other party with the way out of an inconsistent situation by disclosure of proof for in advance of trial for such uses as he may make thereof. Civil Practice Act, § 2388.	030915.docx	LEGALCASE-00138930-0 LEGALCASE-00138931-0	Condensed, SA	0.63	0 1	0 0	1 1	1 1	1 1

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1247	Gottlieb v. Morgan, 119 A.L.3d 1034	307A-16.1	We reverse. New York courts "may exercise personal jurisdiction over an out-of-state defendant who is present or through an agent or conducts any business within the state" (C.R.R. 302(a)(1)). However, C.R.R. 302(a)(1) is a "single act statute.... proof of one transaction in New York is sufficient to invoke jurisdiction, even though the defendant never enters New York, so long as the defendant's activities here were purposeful and there is a substantial relationship between the transaction and the claim asserted" (Deutsche Bank Sec., Inc. v. Montana Bd. of Inv., 7 N.Y.2d 65, 71, 818 N.Y.S.2d 164, 854 N.E.2d 1006, cert. denied 540 U.S. 1095, 127 S.Ct. 2362, 140 L.Ed.2d 653, 2003 WL 2166333, 2003 WL 2166333 (N.Y. 2003)).	Issue of whether long-arm jurisdiction exists often presents complex questions, discovery is, therefore, desirable, and may be essential, and solely on the basis of inconclusive preliminary affidavits. McKinney's CPLR 302(b)(1).	Does the issue of whether a long-arm jurisdiction exists often present complex questions?	Prelim Procedure - Memo # 4530 - C- PC.docx	ROSS-0029115-1055-003291152	SA, Sub	0.88	0	1	1	21,876	1	9,079	
1248	Friedman v. Heart Inst. of Port St. Lucie, 863 So. 2d 189	307A-16.1	Certainly, the substance of the Florida Rules of Civil Procedure, buttressed by illogical protective caselaw, strikes the proper balance between allowing appropriate discovery and protecting litigants' privacy and equitable interests. While the general rule in Florida is that personal financial information is ordinarily discoverable only in aid of execution after judgment has been entered, see <i>Crum v. Bankers Trust Co.</i> , 379 So.2d 616 (Fla. 3d DCA 1980), <i>Cooper v. Nation</i> , 117 So.2d 331, 35-86 (Fla. 3d DCA 1960). The information at issue in this case would be relevant to the subject matter of the pending action. The information is fully discoverable. <i>Epstein v. Epstein</i> , 515 So.2d 1042, 1043 (Fla. 3d DCA 1988). A party's finances, if relevant to the disputed issues of the underlying action, are not excepted from discovery under this rule of relevancy, and courts will compel production of personal financial documents and information if shown to be relevant by the requesting party. See <i>id.</i> ; <i>Jacob v. Jacob</i> , 53 So.2d 169, 173 (Fla.3d DCA 1951); <i>Horris v. Horris</i> , 53 So.2d 169, 173 (Fla.3d DCA 1951); <i>Horris v. Horris</i> , 53 So.2d 169, 173 (Fla.3d DCA 1951). [T]he financial information at issue was relevant to the calculation of damages under the breach of contract count. Discovery of those matters was proper." <i>Citibank, N.A. v. Pipiliger</i> , 461 So.2d 1027, 1027 (Fla. 3d DCA 1985); <i>Ashecraft v. Harvey</i> , 315 So.2d 530, 531 (Fla. 4th DCA 1975).	While the general rule is that personal financial information is ordinarily discoverable only in aid of execution after judgment has been entered, where materials sought by a party would appear to be relevant to the subject matter of the pending action, the information is fully discoverable.	Where materials sought by a party would appear to be relevant to the subject matter of the pending action, is the information fully discoverable?	Prelim Procedure - Memo # 4554 - C- ES.docx	ROSS-00315659-ROSS-003315660	Condensed SA, Sub	0.8	0	1	1	1	1	1	1
1249	Revan v. City of Los Angeles, 85 Cal. App. 4th 316	228A-18.7	A general demurrer based on the statute of limitations is only permissible where the dates alleged in the complaint show that the action is barred by the statute of limitations. (See <i>Salter v. Pierce Brothers Mortuaries</i> (1978) 81 Cal. App. 3d 292, 300, 146 Cal. Rptr. 271.) The running of the statute must appear "clearly and affirmatively" from the dates alleged. It is not sufficient that the complaint might be barred. (<i>Marshall v. Gibson, Dunn & Crutcher</i> (1995) 37 Cal. App. 4th 1397, 1403, 44 Cal. Rptr. 2d 339.) If the dates establishing the running of the statute of limitations do not appear clearly and affirmatively from the complaint, the proper remedy is to file a motion for summary judgment. The proper remedy "is to ascertain the factual basis of the contention through discovery and, if necessary, file a motion for summary judgment...." (<i>United Western Medical Centers v. Superior Court</i> (1996) 42 Cal. App. 4th 500, 505, 49 Cal. Rptr. 2d 682).	If the dates establishing the running of a statute of limitations do not clearly appear in the complaint, the proper remedy is to ascertain the factual basis of the contention that limitations has run through discovery and, if necessary, to file a motion for summary judgment.	Question if the dates establishing the running of a statute of limitations do not clearly appear in the complaint, is the proper remedy to ascertain the factual basis of the contention that limitations has run through discovery?	Prelim Procedure - Memo # 5019 - C- SU.docx	LEGALISE-00029067-LEGALISE-00029068	SA, Sub	0.7	0	0	1	1	1		
1250	Stelly v. Papania, 327 S.W.2d 620	307A-186	A party may withdraw a deemed admission "upon a showing of good cause." <i>Id.</i> The proper remedy is to ascertain the factual basis of the contention through discovery and, if necessary, file a motion for summary judgment. The proper remedy "is to ascertain the factual basis of the contention through discovery and, if necessary, file a motion for summary judgment...." (<i>United Western Medical Centers v. Superior Court</i> (1996) 42 Cal. App. 4th 500, 505, 49 Cal. Rptr. 2d 682).	Good cause is a threshold standard for withdrawal of deemed admissions; it is not a threshold standard for withdrawal of deemed admissions showing that it is failure to answer was accidental or the result of a mistake?	Is good cause a threshold standard for withdrawal of deemed admissions; it is not a threshold standard for withdrawal of deemed admissions showing that it is failure to answer was accidental or the result of a mistake?	Prelim Procedure - Memo # 5230 - C- SUS.docx	ROSS-00328932-ROSS-00328932	Condensed SA	0.55	0	1	0	1			

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1251	Marine Midland Bank v. Miller, 684 F.2d 989	1704+1275.5	Given this less onerous standard, Miller's motion should not have been denied on the basis of the record before the district court. In fact, the district court has considerable procedural leeway. It may determine the motion on the basis of affidavits alone, or it may permit discovery in aid of the motion, or it may conduct an evidentiary hearing on the merits of the motion. Visual Sciences, Inc. v. Integrated Communications Inc., 660 F.2d 96 (2d Cir. 1981); Welsh v. Gibbs, 631 F.2d 436, 438-39 (6th Cir. 1980), cert. denied, ___ U.S. ___, 101 S.Ct. 1517, 67 L.Ed.2d 816 (1981); Data Resources, Inc. v. Systems Technology Associates, 557 F.2d 1280, 1285 (9th Cir. 1977). The district court's decision to conduct an evidentiary hearing on the motion, the plaintiff made make only a prima facie showing of jurisdiction through its own affidavits and supporting materials. Eventually, of course, the plaintiff must establish jurisdiction by a preponderance of the evidence, either at a pretrial evidentiary hearing or at trial. But until such a hearing is held, a prima facie showing suffices, notwithstanding any controverting presentation by the moving party, to defeat the motion. Visual Sciences Inc. v. Integrated Communications, Inc., 660 F.2d 96 (2d Cir. 1981); see also, e.g., In re American Telephone & Telegraph United States v. Montreal Trust Co., supra, 358 F.2d at 242.	In deciding pretrial motion to dismiss for lack of personal jurisdiction, district court has considerable procedural leeway and may determine the motion on the basis of affidavits alone, or it may permit discovery in aid of the motion, or it may conduct evidentiary hearing on merits of motion. Fed.Rules.Civ.Proc. Rule 120(b)(2). 28 U.S.C.A.	Does the court have discretion to decide a pretrial motion to dismiss for lack of personal jurisdiction on the basis of affidavits alone?	02795.docx	LEGALISE-0013987-LEGALISE-0013988	Condensed, SA	0.78	839 0	1 0	15,344 14,873	21,876 21,876	9,079
1252	United States v. Foley, 79 F.3d 484	63+1(1)	In sum, the legislative history of § 666 indicates that the value of a thing for purposes of "666(a)(1)(B) is not to be assessed by reference to any and every perspective or measure of value, no matter how subjective or objective, but rather by reference to the value of the thing as connected, even if only indirectly, to the integrity of federal program funds.	For purposes of statute governing theft or bribery concerning programs receiving federal funds, value of a thing is not to be assessed by reference to any and every perspective or measure of value, no matter how subjective or objective, but rather by reference to the value of the thing as connected, even if only indirectly, to integrity of federal program funds. 18 U.S.C.A. § 666(a)(1)(B).	"For purposes of the statute governing theft or bribery concerning programs receiving federal funds, what must the assessment of a thing's value be connected to?"	012148.docx	LEGALISE-0014195-LEGALISE-0014192	Condensed, SA, Sub 0.05		0	1	1	1	1
1253	Wallace v. Morgan, 23 Ind. 399	113+3	To render such a custom valid to control a general principle, it should be well defined, be in general use at the place by those engaged in the business to which it is applicable, and of such standing as to raise a reasonable presumption that it is known to those engaged in making shipments to such place. It should be uniform, and so well settled that persons in the trade must be considered as contracting with reference to it.	It should be uniform, and so well settled that persons in the trade must be considered as contracting with reference to it.	When is a custom rendered valid to control a general contract principle?	010214.docx	LEGALISE-0014191-LEGALISE-00141915	Condensed, SA, Sub 0.57	0	1	1	1	1	1
1254	Texasco v. R.R. Comm'n, 583 S.W.2d 307	260+92.50	It is now well settled that the Railroad Commission is vested with the power and charged with the duty of regulating the production of oil and gas for the prevention of waste as well as for the protection of correlative rights. Railroad Commission v. Shell Oil Company, 380 S.W.2d 556 (Tex. 1963). While Texasco and Frost are correct that it is an elementary principle of law that the share of oil from a common reservoir is to be determined by the rule of capture and the Commission's authority to prevent waste, in Correllus v. Harnell, 143 Tex. 509, 186 S.W.2d 961 (1945), it was held that the rule in this state recognizes the ownership of oil and gas in place, and gives to the lessee a determinable fee therein. It is also held that such rule should be considered in connection with the law of capture, which is recognized as a property right, and both rules are subject to regulation under the police power of this state. Thus, the right to be protected under the rule of capture and the Commission's oil and gas rules is not unconditional or unlimited.	While it is an elementary rule of property that a landowner is entitled to an opportunity to produce his fair share of oil from a common reservoir, such rule is qualified by both the rule of capture and Railroad Commission's authority to prevent waste.	Is the rule of property that a landowner is entitled to an opportunity to produce his fair share of oil from a common reservoir qualified by both the rule of capture and the Commission's authority to prevent waste?	021132.docx	LEGALISE-001407916-LEGALISE-001407937	Condensed, SA, Sub 0.78	0	1	1	1	1	1
1255	RKT Properties v. Northwood, 2005-Ohio-4178, 12, 162 Ohio App. 3d 590	307A+486	Upon reviewing the Thompson case, we find that we emphasized only the requirement of finding no "compelling" reason for withdrawal of the admissions without stating the prejudice involved. Therefore, in this case we emphasize both aspects of the rule. While cases should ideally be decided on the basis of the facts, we find that the rule should be applied upon an admission while preparing for trial without incurring prejudice because of that reliance. Therefore, while Civ.A. 36 permits a later withdrawal of the admission, it should be allowed only after considering the prejudice to the other party. Against this prejudice the court must weigh the "compelling" circumstances that led to the failure to respond to the request for admissions. Willis, supra and Babson v. Boods (1980), 62 Ohio St.2d 287, 590, 36 O.O.3d 325, 465 N.E.2d 923.	While rule governing requests for admissions permits a later withdrawal of the admission, it should be allowed only after considering the prejudice to the other party, against this prejudice the court must weigh the "compelling" circumstances that led to the failure to respond to the request for admissions. Rules Civ.Proc., Rule 36.	"While the rule governing requests for admissions permits a later withdrawal of the admission, should it be allowed only after considering the prejudice to the other party, against this prejudice the court should weigh the compelling circumstances that led to the failure to respond to the request for admissions?"	027198.docx	LEGALISE-001407984-LEGALISE-001407985	Condensed, SA, Sub 0.6	0	1	1	1	1	1
1256	Willener v. Sweeting, 107 Wash. 2d 388	307A+485	Finally, plaintiffs argue the trial court abused its discretion by denying their costs of discovery claimed necessary by defendants' failure to admit the truth of a matter. CR 37(c) provides reasonable expenses incurred in making proof of the offending party's failure to admit (including reasonable attorney fees). However, as plaintiffs note in their own brief, this procedure is to obtain "admission of facts as to which there is no real qualification." Reed Sand & Gravel v. Bellevue Properties, 7 Wash.App. 701, 502 P.2d 480 (1973). The determination of costs associated with CR 37(c) is within the bound of the trial courts' discretion. Reed, at 705, 502 P.2d 480. Unless the discretion is exercised on untenable grounds or for untenable reasons, it will not be disturbed. Reed Sand & Gravel v. Bellevue Properties, supra.	Determination of costs associated with rule providing for reasonable expenses incurred in making proof of offending party's failure to admit, including reasonable attorney fees, is within bounds of trial courts' discretion. CR 37(c).	Is determination of costs associated with rule providing for reasonable expenses incurred in making proof of offending party's failure to admit?	030696.docx	LEGALISE-0014132-LEGALISE-0014133	Condensed, SA	0.74	0	1	0	1	

ROW	Judicial Opinion	WKNS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
1257	I-CA Enterprises v. Palam Americas, 185 Cal. Rptr. 3d 24	307A+36.1	I-CA also cites <i>Kerner v. Superior Court</i> (2012) 206 Cal.App.4th 84, 119, 141 Cal.Rptr.3d 904 (<i>Kerner</i>). For the proposition that "[p]ertential discovery of a defendant's financial condition in connection with a claim for punitive damages is prohibited absent a court order permitting the plaintiff to seek such an order prior to trial. As explained in <i>Kerner</i> , a plaintiff who believes that there is a substantial probability that the plaintiff will prevail on its punitive damages claim must seek such a court order in order to obtain the supporting information."	A plaintiff who believes that there is a substantial probability that the plaintiff will prevail on its punitive damages claim must seek a court order permitting pretrial discovery of the defendant's financial condition in order to obtain the supporting information. Cal. Civ. Code § 3295(l).	Can a plaintiff who believes that there is a substantial probability that the plaintiff will prevail on its punitive damages claim seek a court order permitting pretrial discovery of the defendant's financial condition in order to obtain the supporting information?	031574.docx	LEGALISE-00141126- LEGALISE-00141127	Condemned, SA, Sub	0.53	0	1	14,473	21,876	9,029
	In re Haley D., 2011 IL 110886	228+135	Where a there is a request to set aside a default has been made before final order or judgment has been entered in a case, section 2-1301(e) of the Illinois Code of Civil Procedure, 735 ILCS 5/2-1301(e) (West 2008), is controlling discretion. 735 ILCS 5/2-1301(d) (West 2008). In exercising that discretion, courts must be mindful that entry of default is a drastic remedy that should be used only as a last resort. See Bank & Trust Co. v. Line Pilot Barges, Inc., 323 Ill.App.3d 412, 414, 256 Ill. Dec. 770, 752 N.E.2d 650 (2001). The law prefers that controversies be determined according to the substantive rights of the parties. See Lynch v. Illinois Hospital Services, Inc., 38 Ill.App.2d 470, 475, 187 N.E.2d 330 (1963). The law also prefers that controversies be determined according to the facts and are to be liberally construed toward that end. See Bank & Trust Co., 323 Ill.App.3d at 414-15, 256 Ill. Dec. 770, 752 N.E.2d 650. When a court is presented with a request to set aside a default under section 2-1301(l), the overriding consideration, as we have already observed, is simply whether or not substantial justice is being done between the litigants and whether it is reasonable, under the circumstances, to compel the other party to litigate its claims. See In re Marriage of Kohn, 259 Ill. App.3d 135, 197 Ill. Dec. 619, 624 (1994). See also In re Marriage of Red v. Adrine, 48 Ill.2d 402, 406, 270 N.E.2d 684 (1971) [opining predecessor provision to section 2-1301]. In making this assessment, a court should consider all events leading up to the judgment. "What is just and proper must be determined by the facts of each case, not by a hard and fast rule applicable to all situations regardless of the outcome. [Citation.] " [Internal quotation marks omitted.] Mann v. The Upjohn Co., 324 Ill.App.3d 307, 317, 257 Ill. Dec. 257, 753 N.E.2d 492 (2001).	In considering a motion to set aside the entry of a default, the court is mindful that the law prefers that controversies be determined according to the substantive rights of the parties and the Code of Civil Procedure be liberally construed toward that end.	Should the controversies be determined according to the substantive rights of the parties and the Code of Civil Procedure be liberally construed toward that end?	Petrial Procedure - Memo 5598 - C-MS.docx	ROSS-003288130-HOSS-003288131	Condemned, SA	0.82	0	1	0	1	1
1258	Potest v. St. Paul Mercury Inc. Co., 277 Mont. 117	307A+54	When deciding a motion to dismiss based on lack of subject matter jurisdiction, a district court must determine whether the complaint states facts that, if true, would vest the district court with subject matter jurisdiction. That, if true, would vest district court with subject matter jurisdiction.	When deciding motion to dismiss based on lack of subject matter jurisdiction, district court must determine whether complaint states facts that, if true, would vest district court with subject matter jurisdiction.	"On a motion to dismiss for lack of subject matter jurisdiction, does a district court determine whether the complaint states facts that, if true, would vest the court with the subject matter jurisdiction?"	033996.docx	LEGALISE-00141409- LEGALISE-00141410	Condemned, SA	0.68	0	1	0	1	1
	Estate of Lawrie v. Lewis, 223 Ariz. 275 P.3d 615	307A+746	Absent a showing of willfulness or something akin to it, a judgment based on a finding of negligence is reversible error. In the absence of such a showing, where such litigation is represented at the hearing by the attorneys of record, constitutes reversible error. 16 A.R.S. Rules Civ.Proc., Rule 16(f). Ohio App.2d 187, 219 N.E.2d 827, 830 P.2 (1966).	Absent a showing of willfulness or something akin to it, a judgment based on a finding of negligence is reversible error. In the absence of such a showing, where such litigation is represented at the hearing by the attorneys of record, constitutes reversible error. 16 A.R.S. Rules Civ.Proc., Rule 16(f).	"Absent a showing of willfulness or something akin to it, does a judgment based on a finding of negligence constitute reversible error?"	Petrial Procedure - Memo 5604 - C-SMS.docx	ROSS-003289761-HOSS-003289762	SA, Sub	0.14	0	0	1	1	1
1260	Brandt v. Brandt, 119 R.I. 607	307A+723.1	It is well settled that the power to continue is inherent in the authority of a court to hear and determine the case before it. See Lemoin v. Wright, 115 R.I. 235, 326 P.2d 329, 460 R.I.2d 187, 30 A.Ct. 607 (1962). The power to continue is not to be exercised lightly, and a court may grant or deny a continuance in its discretion. In the absence of such a showing to the contrary, may sua sponte order a continuance in its discretion. In the eyes of the court, necessary. White v. State, 169 Neb. 113, 119, 98 N.W.2d 688, 692 (1959); Fleming v. Jarrett, 102 A.2d 393, 304 (D.C.Mun.App. 1954); Foster v. Redfield-50V1-285, 292 (1877).	Power to continue is inherent in authority of court to hear and determine cases before it, and court may grant or deny motion properly before it, or, in its discretion, may sua sponte order a continuance in its discretion. In the eyes of court, necessary. Greenlaw 1956, 58-10-38, 15-11-1, 15-11-2.	"Is the power to continue inherent in authority of a court to hear and determine cases before it, and a court may grant or deny a motion properly before it?"	030642.docx	LEGALISE-00142951- LEGALISE-00142952	Condemned, SA	0.44	0	1	0	1	1
1262	Pro. Exp. Co. v. Needham, 37 Tex. Civ. App. 125	307A+723.1	Under R.C.S.1895, art. 1277, providing that, on the first application for a continuance, the court shall grant the same, if the applicant has furnished an affidavit that such testimony is material and that he has due diligence, an application for continuance is properly refused where it fails to state the use of due diligence to procure the required testimony.	Under R.C.S.1895, art. 1277, providing that, on the first application for a continuance, the court shall grant the same, if the applicant has furnished an affidavit that such testimony is material and that he has due diligence, an application for continuance is properly refused where it fails to state the use of due diligence to procure the required testimony.	"Is an application for continuance properly refused where it fails to state the use of due diligence to procure the required testimony?"	030660.docx	LEGALISE-00142796- LEGALISE-00142797	Condemned, SA, Sub	0.49	0	1	1	1	1
1263	Bloshaw v. Saldinger, 275 Cal. Rptr. 3d 650	307A+477.1	A party to an action may not necessarily avoid responding to a request for admission on the ground that the request calls for expert opinion and the party does not know the answer. (See Chodov v. Superior Court for Los Angeles County (1963) 215 Cal.App.2d 318, 322-323, 30 Cal.Rptr. 303.) (Defendants claimed request for admission "called for an expert opinion and the party does not know the answer." (1963) 215 Cal.App.2d 318, 322-323, 30 Cal.Rptr. 303.) "Since requests for admissions are not limited to matters within personal knowledge of the responding party, that party has a duty to make a reasonable investigation of the facts before answering items which do not fall within his personal knowledge. (Lindgren v. Superior Court (1965) 237 Cal.App.2d 743, 746 (47 Cal.Rptr. 298); Chodov v. Superior Court (1963) 215 Cal.App.2d 318, 322 (30 Cal.Rptr. 303).) [Cite v. Circle Plaintiff Co. (1978) 87 Cal.App.3d 267, 273, 150 Cal.Rptr. 881].	Since requests for admissions are not limited to matters within personal knowledge of the responding party, that party has a duty to make a reasonable investigation of the facts before answering items which do not fall within his personal knowledge. Cal. Civ. Code § 2033.22(c).	"Since requests for admissions are not limited to matters within personal knowledge of the responding party, does the party has a duty to make a reasonable investigation of the facts before answering items which do not fall within his personal knowledge?"	030672.docx	LEGALISE-00142873- LEGALISE-00142874	SA, Sub	0.7	0	0	1	1	1

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1364	In re Petition to Annex Approximately 7,806 Acres of Real Estate into City of Jeffersonville, 891 N.E.2d 1357	307A+554	"Jurisdiction over the case" refers rather to various procedural prerequisites to the exercise of subject matter jurisdiction. Padark v. Shopman, 852 N.E.2d 927, 930 (Ind.2006). The issue of a party's failure to satisfy such procedural prerequisites is properly raised by means of a motion under Ind. Trial Rule 12(B)(1) for lack of jurisdiction or 12(B)(6) for failure to state a claim, depending on whether the claimed defect is apparent on the face of the complaint. Trial Procedure Rule 12(B)(1, 6).	The issue of a party's failure to satisfy procedural prerequisites for motion to dismiss for lack of jurisdiction or for failure to state a claim, depending on whether the claimed defect is apparent on the face of the complaint. Trial Procedure Rule 12(B)(1, 6).	By what means is the issue of a party's failure to satisfy jurisdiction properly raised?	033603.8doc	LEGALASE-00143075- LEGALASE-00143076	Condensed, SA, Sub 0.5.2	839	0	1	14,873	21,276	9,029
1365	Verploegh v. Gagliano, 356 Ill. App. 3d 1041	307A+560	"The purpose of Rule 103(b), and a primary reason for its passage, is the prevention of intentional delay in the service of summons which would deprive a defendant of his right to a speedy trial. The purpose of the rule is to prevent a party from obtaining service for an indefinite time after a statutory period of limitations has run. Sup.Ct.Rules, Rule 103(b).	Purpose of Service Court rule allowing dismissal for lack of diligence in obtaining service of process, and a primary reason for its passage, is the prevention of intentional delay in the service of summons which would deprive a defendant of his right to a speedy trial. The purpose of the rule is to prevent a party from obtaining service for an indefinite time after a statutory period of limitations has run.	Is the primary reason for the passage of Rule 103(b) the prevention of intentional delay in the service of summons which would deprive a defendant of his right to a speedy trial?	033756.doc	LEGALASE-0014497- LEGALASE-0014498	SA, Sub	0	0	1	1	1	1
1366	U.S. Bank Nat. Ass'n v. Martiner, 188 So. 3d 107	307A+746	Florida Rule of Civil Procedure 1.200(c) provides that if a party fails to attend either a pretrial or case management conference, the court may "dismiss the action, strike the pleadings, limit proof or witnesses, or take any other appropriate action." However, the sanction must be commensurate with the offense. Drakeford v. Barnett Bank of Tampa, 694 So.2d 1041, 1042 (Fla. 4th DCA 2003). The court must also consider the "harshness of all sanctions." The trial court must explicitly find that the party's actions were willful, flagrant, deliberate, or otherwise aggravated.	Because dismissal of an action is the harshest of all sanctions, the trial court must explicitly find that the party's actions in failing to attend a pretrial or case management conference were willful, flagrant, deliberate, or otherwise aggravated. West's F.S.A. RCP Rule 1.200(c).	'Should the trial court explicitly find that the party's actions in failing to attend a pretrial or case management conference were willful, flagrant, deliberate, or otherwise aggravated because dismissal of an action would be the harshest of all sanctions?'	033783.8doc	LEGALASE-00142356- LEGALASE-00142357	Condensed, SA	0	1	0	1	1	1
1367	McRoberts v. Bridgestone Americas Holding, 355 Ill. App. 3d 1039	307A+560	Other words, the trial court's determination of a plaintiff's lack of diligence "is a fact-intensive inquiry suited to balancing, not bright lines." Hinkle, 135 F.3d at 524. Furthermore, there is no set time limit during which service must be effected, and each decision on a Rule 103(b) motion to dismiss must be "based on the facts and circumstances in each particular case." Markov v. Ruben H. Dornelle, Inc., 260 Ill.App.3d 1042, 1047, 201 Ill. Dec. 393, 638 N.E.2d 825, 829 (1994).	For purposes of motion to dismiss for a failure to act with reasonable diligence in effecting the service of process, the standard the trial court is to apply when determining whether a plaintiff was duly diligent in effecting the service of process is an objective one, with each case turning on its own specific facts; the trial court's determination of a plaintiff's lack of diligence is a fact-intensive inquiry suited to balancing, not bright lines. Sup.Ct.Rules, Rule 103(b).	'Is the trial court's determination of a plaintiff's lack of diligence in obtaining service of process, so as to warrant dismissal, an objective one and a fact-intensive inquiry suited to balancing?'	033805.8doc	LEGALASE-00142266- LEGALASE-00142267	Condensed, SA, Sub 0.0.2	0	1	1	1	1	1
1368	Laskov, Meier, 394 Ill. 71	302A+33(5)	All attendments are in favor of the sufficiency of a complaint which is not questioned until after verdict. Convent v. Winger, 374 Ill. 531, 530 N.E.2d 1, 1 Hinkle, 135 F.3d at 524. Furthermore, there is no set time limit during which service must be effected, and each decision on a Rule 103(b) motion to dismiss must be "based on the facts and circumstances in each particular case." Markov v. Ruben H. Dornelle, Inc., 260 Ill.App.3d 1042, 1047, 201 Ill. Dec. 393, 638 N.E.2d 825, 829 (1994).	A clerical error in a complaint, but will also cure any defect in failing to allege or in alleging defectively any substantial facts is essential to a right of action, if issue joined is such as necessarily requires, on trial, proof of facts so omitted or imperfectly stated, and if such facts can be implied from allegations of complaint by fair and reasonable inendment.	Will a verdict cure technical defects in a complaint?	023512.8doc	LEGALASE-00143864- LEGALASE-00143865	Condensed, SA	0	1	0	1	1	1

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	Cuzzo v. Town of Orange, 312 Conn. 606	307A+678	"Finally, where a jurisdictional determination is dependent on the resolution of a critical factual dispute, it cannot be decided on a motion to dismiss in the absence of an evidentiary hearing to establish jurisdictional facts. Gordon v. H.N.S. Management Co., 272 Conn. 81, 92, 861 A.2d 1160 (2004) [When issues of fact are necessary to the determination of a court's jurisdiction due process requires that a trial-like hearing be held, in which an opportunity is provided to present evidence and to cross-examine adverse witnesses]. Schaghticoke Tribal Nation v. Harrison, 264 Conn. 829, 833, 836 A.2d 1202 (2003) [same]. Likewise, if the question of jurisdiction is intertwined with the merits of the case, a court cannot resolve the jurisdictional question without a hearing to evaluate those merits. Lampsona v. Jacobs, 209 Conn. 724, 728, 553 A.2d 175 (1989) [In some cases it is necessary to examine the facts of the case to determine whether it is within a general class that the court has power to hear]. whether it is within a general class that the court has power to hear). cert. denied, 492 U.S. 919, 109 S.Ct. 3244, 106 L.Ed.2d 590 (1989)."] (Citations omitted; emphasis added; internal quotation marks omitted.) Dorn v. Garden, supra, 313 Conn. at 527-24, 98 A.3d 55. "When the jurisdictional facts are intertwined with the merits of the case, the court may in its discretion choose to postpone resolution of the jurisdictional question until the parties complete further discovery or, if necessary, a full trial on the merits has occurred." Conboy v. State, supra, 292 Conn. at 603 n. 16, 974 A.2d 669. In that situation, "an evidentiary hearing is necessary because a court cannot make a critical factual jurisdictional finding based on memoranda and documents submitted by the parties." (Internal quotation marks omitted.) Id. at 603-54, 974 A.2d 669.	When the jurisdictional facts are intertwined with the merits of the case, the court may in its discretion choose to postpone resolution of a jurisdictional question brought pursuant to a motion to dismiss until the parties complete further discovery?"	032675.docx	LEGAL/SE-00143321-LEGAL/SE-00143322	SA, Sub	0.71	0	1	1	21,876	9,029	
1269														
	Kerry v. Banks, 280 Conn. 529	307A+554	"[A] challenge to the jurisdiction of the court presents a question of law over which our review is plenary." Ryan v. Centilo, 282 Conn. 109, 118, 918 A.2d 867 (2007). "When a defendant challenges personal jurisdiction in a motion to dismiss, the court must undertake a two part inquiry to determine the propriety of its exercising such jurisdiction over the defendant. The trial court must first decide whether the applicable state long-arm statute authorizes the assertion of jurisdiction over the defendant, and if the statutory requirements [are] met, it is secondarily obligated to decide whether the exercise of jurisdiction is consistent with the constitutional principles of due process. U.S.C.A. Const.Amend. 14.	When a defendant challenges personal jurisdiction in a motion to dismiss, the court must undertake a two part inquiry to determine the propriety of its exercising such jurisdiction over the defendant?"	033049.docx	LEGAL/SE-00143860-LEGAL/SE-00143861	SA, Sub	0.52	0	1	1	1		
1270														
	Wilson v. McNeely, 302 Ga. App. 213	307A+746	In Ambler v. Archer, 230 Ga. 281, 288-290, 196 S.E.2d 858 (1973), the Supreme Court addressed "what sanctions should attach to disobedience of the order of the court directing the parties to agree on a pre-trial order or upon the failure of counsel to attend a pre-trial conference previously set by order of the court, and participate in the making of the pre-trial order which was finally entered." Id. at 288-289, 196 S.E.2d 858. After recognizing that the trial court must have the power "to impose appropriate sanctions to make effective its pre-trial orders," the Supreme Court noted that: "[c]ontempt may at times be proper; and in an extreme case the plaintiff's action may be dismissed or the defendant's case may be sustained without further trial. The court, from introducing evidence relating to its defense, but these remedies are too drastic if less harsh sanctions are appropriate." (Emphasis supplied.) Id. at 289, 196 S.E.2d 858.	The trial court must have the power to impose appropriate sanctions to make effective its pre-trial orders; contempt may at times be proper, whereas, in an extreme case, the plaintiff's action may be dismissed or the defendant's case may be sustained without further trial. The court, from introducing evidence relating to his defense, although these remedies are too drastic if less harsh sanctions are appropriate.	Can contempt be proper as a sanction for a violation of a trial court's pretrial order?	Pretrial Procedure - Memo # 5809 - C-38.docx	ROSS-00288984-KOSS-00288985	SA, Sub	0.59	0	0	1	1	
1271														
	Carman-Crothers v. Brynda, 2014 IL App (1st) 130280	307A+685	When moving for dismissal pursuant to Rule 103(b), a defendant must make a prima facie showing that the plaintiff failed to act with reasonable diligence in effectuating service after filing the complaint. Erickson, 2012 IL App (1st) 111687, 365 Ill. Dec. 66, 977 N.E.2d 1165. The trial court evaluates whether the defendant has made this showing on a case-by-case basis. Koe v. Brubaker, 325 Ill. App.3d 944, 949, 259 Ill. Dec. 649, 759 N.E.2d 122 (2001). Once the defendant shows that the length of time between the filing of the complaint and the date of service suggests a lack of diligence, the burden shifts to the plaintiff to provide a reasonable explanation for the delay. Erickson, 2012 IL App (1st) 111687, 365 Ill. Dec. 66, 977 N.E.2d 1165. To meet this burden, the plaintiff must present an affidavit or other evidentiary materials which show that the delay in service was reasonable and justified under the circumstances. Iole, 325 Ill. App. 3d at 949-50, 259 Ill. Dec. 649, 759 N.E.2d 129. If the plaintiff fails to provide a reasonable explanation for the delay, the court may dismiss the action against the defendant pursuant to Rule 103(b). Erickson, 2012 IL App (1st) 111687, 365 Ill. Dec. 66, 977 N.E.2d 1165.	To meet the burden of providing a reasonable explanation for the delay in effectuating service, in order to avoid dismissal or failure to exercise reasonable diligence in obtaining service on a defendant, the plaintiff must present an affidavit or other evidentiary materials which show that the delay in service was reasonable and justified under the circumstances?"	033607.docx	LEGAL/SE-00143834-LEGAL/SE-00143835	Condensed, SA, Sub	0.68	0	1	1	1	1	
1272														

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1273	McRobert v. Bridgestone Americas Holding, 365 Ill. App. 3d 1039	313-463	Although the Illinois Supreme Court has explained that a dismissal under Rule 103(b) is to apply when determining whether a plaintiff was truly diligent in effecting the service of process is an objective one, with each case governed by its facts, the court in this case found that the plaintiff was diligent in effecting the service of process. 144 Ill. Dec. 360, 355 NE 2d 719, 720 (1990). Womack v. Jackson County Nursing Home, 137 Ill. 2d 371, 361, 148 Ill. Dec. 719, 561 N.E.2d 25, 29 (1990); Keytek Electric, Inc. v. Malik & Harris, 257 Ill. App. 3d 936, 940, 232 Ill. Dec. 143, 697 N.E.2d 885-888 (1998); Hinkle v. Henderson, 135 F.3d 521, 524 (7th Cir. 1998). In other words, the trial court's determination of a plaintiff's lack of diligence "is a fact-intensive inquiry suited to balancing, not bright lines." Hinkle, 135 F.3d at 524. The court's decision in this case is based on the facts and circumstances presented, and each decision on a Rule 103(b) motion to dismiss must be "based on the facts and circumstances in each particular case." Marks v. Rueben H. Dornedley, Inc., 260 Ill. App. 3d 1042, 1047, 201 Ill. Dec. 393, 635 N.E.2d 825, 829 (1994).	There is no set time limit during which service must be effected, and each decision on motion to dismiss for a failure to act with reasonable diligence in effecting the service of process must be based on the facts and circumstances in each particular case. Sup. Ct. Rules, Rule 103(b).	"Is there no set time limit during which service must be effected, and each decision on motion to dismiss for a failure to act with reasonable diligence in effecting the service of process must be based on the facts and circumstances in each particular case?"	LEGALCASE-00144048-LEGALCASE-00144050		Condensed, SA, Sub 0.76	839	15,344	14,873	21,876	9,029	
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1274	Asim v. Johns, 254 P.3d 1054	307A-583	In addition, when long held that before a litigation ending order is entered on the basis of a party's alleged failure to prosecute or to abide by court rules, the court must give the litigant notice and an adequate opportunity to cure the defects in his pleadings. Here, the superior court did inform Asimi that if he was not prepared for trial, "we'll have the jury picked and if you don't put on any evidence, I will end up having to dismiss your case." But contrary to the superior court's December 19 warning, the court dismissed the case before trial, without determining whether the court was required to give Asimi notice and an adequate opportunity to cure the defects in his pleadings. The court's decision must be based on the facts and circumstances in each particular case. Asimi was never squarely given the choice to proceed to trial or "have his complaint dismissed." If Asimi's complaint was dismissed on the basis of his alleged failure to comply with court orders, it was an abuse of discretion.	Before a litigation ending order is entered on the basis of a party's alleged failure to prosecute or to abide by court rules, the court must give the litigant notice and an adequate opportunity to cure the defects in his pleadings. Rules Civ.Proc., Rules 37, 41(b).	"Before a litigation ending order is entered on the basis of a party's alleged failure to prosecute or to abide by court rules, should the court give the litigant notice and an adequate opportunity to cure?"	Pretial Procedure - Memo # 6718 - C-SS.docx	ROSS-003288445-ROSS-00328847	Condensed, SA, Sub 0.7	0	1	1	1	1	
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1275	Chapelle v. S. Florida Community program, 109 So. 3d 821	307A-46	Before a court may dismiss a cause as a sanction, it must first consider the six factors presented in Asim v. Johns. If the court finds that the plaintiff's failure to prosecute or to abide by court rules, the court must give the litigant notice and an adequate opportunity to cure the defects in his pleadings. Rules Civ.Proc., Rules 37, 41(b).	Before a court may dismiss a cause as a sanction, it must first consider the six factors presented in Asim v. Johns. If the court finds that the plaintiff's failure to prosecute or to abide by court rules, the court must give the litigant notice and an adequate opportunity to cure the defects in his pleadings. Rules Civ.Proc., Rules 37, 41(b).	"Before a court may dismiss a cause as a sanction for willful noncompliance with court rules, should the court give the litigant notice and an adequate opportunity to cure the defects in his pleadings?"	Pretial Procedure - Memo # 6742 - C-SS.docx	ROSS-00328862-ROSS-00328867	Condensed, SA, Sub 0.7	0	1	1	1	1	
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1276	Smith v. Sidney Moncrief Pontiac Buick, GMC Co., 333 AH 701	307A-560	Pursuant to Rule 41) of the Arkansas Rules of Civil Procedure, it is also mandatory for the trial court to dismiss the action without prejudice if service is not made within 120 days of filing the complaint and no motion to extend is timely made. Rules Civ. Proc., Rule 41).	Is it mandatory for the trial court to dismiss the action without prejudice if service is not made within 120 days of filing the complaint and no motion to extend is timely made? Rules Civ. Proc., Rule 41).	"Is it mandatory for the trial court to dismiss the action without prejudice if service is not made within 120 days of filing the complaint and no motion to extend is timely made?"	Pretial Procedure - Memo # 6770 - C-ES.docx	ROSS-003316835-ROSS-00331686	Order, SA	1	0	0	1	1	
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1277	Smith v. Sidney Moncrief Pontiac Buick, GMC Co., 333 AH 701	307A-560	Under Rule 41(b), a second dismissal based on failure to serve valid process shall be made with prejudice where the plaintiff has previously taken a voluntary nonsuit. Baker v. Ralston, 326 Ark. 275, 932 S.W.2d 325 (1996). Although Rule 41) applies when there is a failure to obtain proper service and nothing more, Rule 41(b) expressly addresses the situation where the plaintiff has previously taken a voluntary nonsuit, where the plaintiff may commence a new action within one year after suffering a nonsuit. Ark.Code Ann., § 16-56-136 (1987).	Under the rule of civil procedure governing dismissals, a second dismissal based on failure to serve valid process shall be made with prejudice where the plaintiff has previously taken a voluntary nonsuit. Rules Civ.Proc., Rule 41(b).	"Under the rule of civil procedure governing dismissals, shall a second dismissal based on failure to serve valid process be made with prejudice where the plaintiff has previously taken a voluntary nonsuit?"	Pretial Procedure - Memo # 6771 - C-ES.docx	ROSS-003302835-ROSS-00330286	Condensed, SA, Sub 0.62	0	1	1	1	1	
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1278	Irre Um's Estate, 345 So. 2d 1059	307A-563	Although a trial court has the inherent power to impose the sanction of dismissal as a coercive and disciplinary measure, the law abhors denial of access to the courts for any reason other than the willful abuse of the processes of the court.	Although a trial court has the inherent power to impose the sanction of dismissal as a coercive and disciplinary measure, the law abhors denial of access to the courts for any reason other than the willful abuse of the processes of the court.	"Although a trial court has the inherent power to impose the sanction of dismissal as a coercive and disciplinary measure, does it follow that denial of access to the courts for any reason?"	Pretial Procedure - Memo # 7114 - C-SMS_37188.docx	ROSS-003281546-ROSS-003282547	Condensed, SA	0	1	0	1	1	
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ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
1290	Avery v. New Hampshire Dept of Educ., 62 N.H. 604	307A-561.1	Generally, in ruling upon a motion to dismiss, the trial court is required to determine whether the allegations contained in the petitioner's pleadings are sufficient to state a basis upon which relief may be granted. Occipie Auto Parts v. Osipow Planning Board, 134 N.H. 401, 593 A.2d 241 (1991). The court must consider all facts pleaded by the parties and the facts alleged by the petitioners as true, construing them most favorably to the petitioners. Id. "When the motion to dismiss does not challenge the sufficiency of the [petitioner's] legal claim but, instead, raises certain defenses, the trial court must look beyond the [petitioner's] unsubstantiated allegations and determine, based on the facts, whether petitioners have sufficiently demonstrated their right to claim relief."	When the motion to dismiss does not challenge the sufficiency of petitioners' legal claim but, instead, raises certain defenses, trial court must look beyond petitioners' unsubstantiated allegations and determine, based on the facts, whether petitioners have sufficiently demonstrated their right to claim relief.	Does the motion to dismiss challenge the sufficiency of petitioners' legal claim or raise certain defenses?	Pretfil Procedure - Memo # 7837 - C - No.docx	R055-00332686E-R055-003326867	Condemned, SA	0.71	0	1	14,873	21,076	9,029
1291	Capital Hill State Bank v. City of Atlanta, 160 Ga. App. 168	831-401	However, it is well settled that a negotiable instrument payable to order is subject to discharge by payment to the holder in due course. Although in such case the defendant takes only the title and right of the one so transferring it, and does not become the holder in due course, but has only the equitable interest of the legal title, which principle is recognized by the Negotiable Instruments Law. (Compiled Statutes, 1910, Section 3207.)	A negotiable instrument payable to order may be transferred by the holder in due course. Although in such case the defendant takes only the title and right of the one so transferring it, and does not become the holder in due course, but has only the equitable interest of the legal title, which principle is recognized by the Negotiable Instruments Law. (Compiled Statutes, 1910, Section 3207.)	Does the transfer become holder in due course when a negotiable instrument is transferred by the payee or holder without endorsement?	Billis and Notes- Memo 07-1-P.docx	LEGALCASE-0038108-LEGALCASE-0038109	Condemned, SA, Sub	0.16	0	1	1	1	1
1292	Mathews v. City of Atlanta, 160 Ga. App. 168	307A-563	Generally, a dismissal with prejudice is warranted only where a clear showing of bad faith exists and a lesser sanction would not better serve interest of justice.	Generally, a dismissal with prejudice is warranted only where a clear showing of bad faith exists and a lesser sanction would not better serve interest of justice?	Is a dismissal with prejudice warranted only where a clear showing of bad faith exists and a lesser sanction would not better serve an interest or justice?	035049.docx	LEGALCASE-00148110-LEGALCASE-00148111	Condemned, SA	0.68	0	1	0	1	1
1293	Frenzel v. Browning-Ferris Industries, 780 S.W.2d 844	307A-581	In determining whether to dismiss a cause for want of prosecution, a trial court may consider the entire history of the case, including the length of time the case was on file, the amount of activity in the case, the request for a trial setting, and the existence of reasonable excuses for delay. See Barby v. Frank B. Hall & Co., 767 S.W.2d 839, 843 (Tex.App. San Antonio 1989), cert. denied, 748 S.W.2d 388 (Tex.S.Ct. 1990) (citing Houston [1st Dist.], writ denied per curiam, 754 S.W.2d 415 (Tex.1988)).	In determining whether to dismiss a cause for want of prosecution, a trial court may consider the entire history of the case, including the length of time the case was on file, the amount of activity in the case, the request for a trial setting, and the existence of reasonable excuses for delay.	"Will a court consider whether a trial setting was requested, in determining whether to dismiss an action for want of prosecution?"	Pretfil Procedure - Memo # 8052 - C - DHA_58406.docx	R055-003294714-R055-003294715	Condemned, SA	0.52	0	1	0	1	1
1294	Wood v. Guilford Cty., 355 N.C. 161	307A-622	On a Rule 12(b)(6) motion to dismiss, the question is whether, as a matter of law, the allegations of the complaint, treated as true, state a claim upon which relief can be granted. Kenton v. Harbo, 350 N.C. 601, 604, 317 S.E.2d 124, 124 (1959). Dismissal under Rule 12(b)(6) is proper when the plaintiff fails to allege facts sufficient to make a good claim, or if the facts alleged are so conclusory that they necessarily defeat the plaintiff's claim. Rule Civ.Proc., Rule 12(b)(6), G.S. § 8C-1.	Dismissal based on failure to state a claim is proper when one of the following three conditions is satisfied: (1) the complaint on its face reveals that no law supports the plaintiff's claim; (2) the complaint on its face reveals the absence of facts sufficient to make a good claim; or (3) the facts alleged are so conclusory that they necessarily defeat the plaintiff's claim. Rule Civ.Proc., Rule 12(b)(6), G.S. § 8C-1.	"When the complaint on its face reveals that no law supports the claim or discloses facts that necessarily defeat the claim, is dismissal proper?"	036572.docx	LEGALCASE-00149465-LEGALCASE-00149466	Condemned, SA, Sub	0.38	0	1	1	1	1
1295	Michigan Athletic Association v. Conquest Co., 716 F.Supp.2d 773	92-1970	Venue, for specifying venue was too public for purpose of action brought by high school athletic association, and publishing agent newspaper publisher and media association, seeking declaration that formation of exclusive licensing agreement for live internet streaming of tournament events did not violate First Amendment; venue were operated in government's proprietary capacity rather than for political purpose, and intent and nature of fora were primarily commercial.	Venue, for specifying venue was too public for purpose of action brought by high school athletic association, and publishing agent newspaper publisher and media association, seeking declaration that formation of exclusive licensing agreement for live internet streaming of tournament events did not violate First Amendment; venue were operated in government's proprietary capacity rather than for political purpose, and intent and nature of fora were primarily commercial.	Can high school athletic associations seek declaratory that formation of exclusive licensing agreement for live internet streaming of tournament?	017336.docx	LEGALCASE-00150508-LEGALCASE-00150509	Condemned, SA, Sub	0.49	0	1	1	1	1
1296	Huffington v. McGorry, 136 N.M. 226	307A-581	Mother's argument overlooks the fact that the motion was denied on January 25, 1991, after it was pending since 1988, because "no action occurred within a substantial period of time on the pending motion." The motion was denied under the provisions of Rule 17A(1)(E) which states in pertinent part that on its own motion the court may dismiss any claim on which no significant action has been taken within the previous 180 days. Furthermore, the rule provides, "[t]he least twice during each year the court shall review motions for summary judgment and it is not the "law of the case" as Mother argues. This rule simply "provides[] a standardized procedure for district courts to evaluate the intentions of parties and their counsel to evaluate the intentions of parties and to rid their dockets of cases that should not be carried as active cases." Vigil v. Thriftway Mfg. Corp., 117 N.M. 176, 179 P.930, 870 P.2d 318, 1474(C App.1994).	Does rule permitting dismissal of pending motion for lack of action on motion, provide a standardized procedure for courts to evaluate the intentions of parties and to rid their dockets of cases that should not be carried as active cases?"	Does rule permitting dismissal of pending motion for lack of action on motion, provide a standardized procedure for courts to evaluate the intentions of parties and to rid their dockets of cases that should not be carried as active cases?"	036661.docx	LEGALCASE-00150578-LEGALCASE-00150579	SA, Sub	0.66	0	0	1	1	1
1297	Hall v. Metro. Dade Cty., 760 So. 2d 0551	307A-581	The inquiry on a motion to dismiss for lack of prosecution involves a two-step inquiry. First, the defendant is required to show there has been no record activity for the year preceding the motion. Second, if there has been no record activity, the plaintiff has an opportunity to establish good cause why the action should not be dismissed." Del Duca v. Anthony, 587 So.2d 1306, 1306-09 (Fla.1991). While the filing of a deposition in Eastern Elevator was viewed as establishing good cause why the action should not be dismissed. Certainly the adoption of the housekeeping amendment to Rule 13.10(f) was not aimed at changing the analysis contained in Eastern Elevator, but instead was aimed at an entirely different problem: solving a record storage problem experienced by the	The inquiry on a motion to dismiss for lack of prosecution involves a two-step inquiry. First, the defendant is required to show there has been no record activity for the year preceding the motion, and second, if there has been no record activity, the plaintiff has an opportunity to establish good cause why the action should not be dismissed. West's F.S.A. RCP Rule 1.420(e).	Does the plaintiff have an opportunity to establish good cause why the action should not be dismissed? If there has been no record activity in the inquiry on a motion to dismiss for lack of prosecution?	036779.docx	LEGALCASE-00150139-LEGALCASE-00150141	SA, Sub	0.57	0	0	1	1	1

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Between Headnote and Opinion	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
	McCall v. DC, Hous. Auth., 126 A.3d 701	307A-3441	We review de novo the trial court's dismissal of a complaint pursuant to Super. Ct. Civ. R. 42.0(b)(1), and apply the same standard as the trial court. The complaint must be dismissed if it is "clearly and conclusively" unavailing. <i>Coner v. Wells Fargo Bank, N.A.</i> , 168 A.3d 864, 371 [O.C.2015] ("internal quotation marks omitted"). To survive a motion to dismiss, a complaint must set forth sufficient facts to establish the elements of a legally cognizable claim. <i>Wood v. District of Columbia</i> , 63 A.3d 551, 552*3 (O.C.2013), containing "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" <i>Abbott v. Iqbal</i> , 556 U.S. 662, 678, 120 S.Ct. 1393, 1393 [12-24-08] (2009) (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1938, 1941 [12-03-05] (2007)).	To survive a motion to dismiss for failure to state a claim upon which the plaintiff is entitled to relief, the complaint must set forth sufficient facts to establish a claim to relief that is plausible on its face. Civil Rule 12(b)(6).	"To survive a motion to dismiss, should a complaint set forth sufficient facts to establish the elements of a legally cognizable claim?"	035885.docx	LEGALCASE-00150166-LEGALCASE-00150167	SA, Sub	0.59	0	1	1	21,876	9,079
1298														
1299	Mitchell v. Pruden, 796 S.E.2d 77	307A-622	A complaint is not sufficient to withstand a motion to dismiss if an insurmountable bar to recovery appears on the face of the complaint. Such an insurmountable bar may consist of an absence of law to support a claim, an absence of facts sufficient to make a good claim, or the disclosure of some fact that necessarily defeats the claim.	A complaint is not sufficient to withstand a motion to dismiss for failure to state a claim if an insurmountable bar to recovery appears on the face of the complaint, such as an insurmountable bar may consist of an absence of law to support a claim, an absence of facts sufficient to make a good claim, or the disclosure of some fact that necessarily defeats the claim.	Is a complaint not sufficient to withstand a motion to dismiss for failure to state a claim if an insurmountable bar to recovery appears on the face of the complaint?	035897.docx	LEGALCASE-00150286-LEGALCASE-00150287	SA, Sub	0.14	0	0	1	1	
1300	Sperner v. Beck, 358 Mont. 295	307A-581	Finally, although it is unnecessary to resolve Sperner's remaining two issues in light of the foregoing holding, we caution courts that a sports decision to take a time bar or re-characterize a complaint for dismissal purposes involves due process considerations. When a court is inclined to make such a dispositional ruling on an issue not raised by the parties, the court must first "afford the parties fair notice and an opportunity to present their positions before acting on its own initiative to dismiss a petition as untimely."	When a court is inclined to make a dispositional ruling on an issue not raised by the parties, the court must first afford the parties fair notice and an opportunity to present their positions before acting on its own initiative to dismiss a petition as untimely.	Should a court first afford the parties fair notice and an opportunity to present their positions before acting on its own initiative to dismiss a petition as untimely?	037017.docx	LEGALCASE-00150098-LEGALCASE-00150099	Condensed, SA	0.56	0	1	0	1	
1301	Osgie v. PeakBoard Temp. Services, 91 S.W.3d 326	307A-581	Although the trial court did not specifically cite the rule, we deem its dismissal of Mr. Osgie's wage claim to be a dismissal for failure to prosecute under rule 41.02 of the Rules of Civil Procedure. This rule is necessary to enable the court to manage its own docket, and to protect defendants against plaintiffs who are unwilling to put their claims to the test, but determined to subject them to the continuing threat of an eventual judgment. Rules Civ.Proc., Rule 41.02.	Purpose of rule governing dismissal of claim for failure to prosecute is to enable court to manage its own docket, and to protect defendants against plaintiffs who are unwilling to put their claims to the test, but determined to subject them to the continuing threat of an eventual judgment. Rules Civ.Proc., Rule 41.02.	Does the purpose of rules governing dismissal of a claim for failure to prosecute is to enable court to manage its own docket, and to protect defendants against plaintiffs who are unwilling to put their claims to the test?	Perital Procedure - Memo # 8389 - C- 5K_59109.docx	R055-003279907-A055-003779908	Order, SA, Sub	0.61	1	0	1	1	1
1302	Trimmer v. Cooper/Jaff Adelsons, 523 F.3d 224	257A-182(2)	In <i>Trimmer</i> we held that "'[p]arties to the benchmarks for determining whether the right to arbitrate has been waived' by litigation conduct." 523 F.3d 224 (9th Cir. 1997). We stated that the "nonexclusive list of factors relevant to the pre-judicial inquiry" includes the timeliness of the motion to compel arbitration, the degree to which the merits of the nonmoving claim have been contested by the party moving for arbitration, whether the non-movant is otherwise aware of the movant's intention to seek arbitration, the extent of the movant's motion practice that has inspired the motion to compel arbitration, and the extent of the movant's discovery which the parties have engaged in discovery. <i>Id.</i> (citing <i>Hosworth</i> , 980 F.2d at 1926-27) Although we have stated that "waiver will normally be found only where the demand for arbitration came long after the suit commenced and when both parties had engaged in extensive discovery," <i>id.</i> at 222-23 (citations, alterations and internal quotation marks omitted), we have also held that "the length of the time period involved alone is not determinative." <i>Palazzo v. Ardmore Express, Inc.</i> , 372 F.3d 368, 391 (9th Cir. 2004).	Factors in determining applicability to nonmoving or litigant's motion to compel arbitration, include timeliness of motion, degree to which merits of nonmoving claim have been contested by movant, whether nonmoving is otherwise aware of movant's intention to seek arbitration, extent of non-merits motion practice that has transpired, movant's assent to trial court's pretrial orders, and degree to which parties have engaged in discovery.	What factors are relevant to a pre-judicial inquiry in determining whether the right to arbitrate is waived?	007940.docx	LEGALCASE-00151603-LEGALCASE-00151605	Condensed, SA, Sub	0.65	0	1	1	1	1
1303	Kamhi v. EnblentHealth, 37 Misc. 3d 171	307A-622	Where evidentiary material is adduced in support of a motion to dismiss for failure to state a cause of action pursuant to CPLR 32.11(a)(7), "the court is required to determine whether the proponent of the pleading has a sufficient basis in fact to state a claim to relief that is plausible on its face." <i>Wheeler v. Quinn</i> , 2012 A.D. 2d 603, 666, 698 N.Y.S.2d 159, 124 Misc.3d 999, 999 (2012) (internal quotation marks omitted). The facts pleaded are presumed to be true and accorded every favorable inference ... bare legal conclusions and actual claims which are flatly contradicted by the evidence are not presumed to be true on such a motion" (<i>Palazzo v. Herrick, Feinstein, LLP</i> , 298 A.D.2d 372, 372, 751 N.Y.S.2d 401 [2d Dept. 2002] [internal citations omitted]). Thus, if documentary evidence disproves an essential allegation of the complaint, a dismissal is warranted pursuant to CPLR 32.11(a)(7) even if the proponent of the pleading has adduced some evidence in support of such a dismissal (see <i>McGuire v. Sterling Doubleday Peters, LP</i> , 19 A.D.3d 460, 662, 799 N.Y.S.2d 65 [2d Dept. 2005], <i>lv.</i> denied 7 N.Y.3d 301, 818 N.Y.S.2d 191, 850 N.E.2d 1166 [2006]).	Where evidentiary material is adduced in support of a motion to dismiss for failure to state a cause of action, the court is required to determine whether the proponent of the pleading has a cause of action, not whether he or she has stated one. <i>McKinney's CPLR 32.11(a)(7)</i> .	"Where evidentiary material is adduced in support of a motion to dismiss for failure to state a cause of action, is the court required to determine whether the proponent of the pleading has a cause of action?"	037256.docx	LEGALCASE-00150938-LEGALCASE-00150939	Order, SA	0.75	1	0	0	1	

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Between Opinion and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
1304	Wright v. Texas Dept of Criminal Justice, 137 S.W.3d 693	307A+581	A trial court's authority to dismiss for want of prosecution stems from the power of the state to prosecute. The state's power to prosecute is not unlimited. A trial court's authority to dismiss for want of prosecution is limited to cases where the state has failed to prosecute within the time standards of the supreme court, or (3) when the trial court finds that the case has not been prosecuted with due diligence. Vernon's Ann. Texas Rules Civ. Proc., Rule 165a.	A trial court can dismiss for want of prosecution under the following circumstances: (1) when a party seeking summary disposition on grounds that the claim is barred by immunity, the allegations set forth in the complaint must be accepted as true unless contradicted by other evidence?"	Can a court dismiss for want of prosecution when the case is not disposed of within the time standards of the Supreme Court?	Pretrial Procedure - MS_59442.docx	R055-0033:9789-1055-003319790	Condensed, SA	0.48	839	15,344	14,873	21,876	9,079
1305	Annett v. Am. Honda Motor Co., 548 N.W.2d 798	307A+581	An unreasonable and unexplained delay has been defined as an omission to do something "which the party might do and might reasonably be expected to do towards vindication or enforcement of his rights." Bradley, 129 N.W.2d at 542 (quoting Potts v. Starr, 76 S.D. 31, 72 N.W.2d 432, 194 S.W.2d at 630). A trial court's authority to dismiss for want of prosecution is limited to cases where the state has failed to prosecute within the time standards of the supreme court, or (3) when the trial court finds that the case has not been prosecuted with due diligence. Vernon's Ann. Texas Rules Civ. Proc., Rule 165a.	Dismissal of cause of action for failure to prosecute should be granted when, after considering all the facts and circumstances of particular case, failing to proceed with reasonable promptitude should be dismissed with reasonable promptitude. SDCI 15-11-11.	When the plaintiff can be charged with lack of due diligence in failing to proceed of the cause of action for failure to prosecute be granted?	037438.docx	LEGALISE-00151725-LEGALISE-00151726	Condensed, SA	0.79	0	1	0	1	1
1306	In re Bradley et al., 296 Mich. App. 31	307A+679	We review de novo a trial court's decision on a motion for summary disposition. Hoffman v. Boonville, 290 Mich. App. 34, 39, 801 N.W.2d 385 (2010). Under MCR 2.116(C)(7), summary disposition is appropriate if a claim is barred because of immunity granted by law. A motion pursuant to MCR 2.116(C)(7) may be supported by affidavits, depositions, admissions, or other documentary evidence as long as the evidence would be admissible. Madden v. Rowwood, 461 Mich. 109, 119, 597 N.W.2d 817 (1999). The allegations set forth in the complaint must be accepted as true unless contradicted by other evidence. If the evidence does not contradict the allegations, the court must accept the moving party's well-pleaded allegations as true and construe the allegations in the nonmoving party's favor to determine whether any factual development could provide a basis for recovery." Hoffman, 290 Mich. App. at 39, 801 N.W.2d 385.	On a motion seeking summary disposition on grounds that claim is barred by immunity, the allegations set forth in the complaint must be accepted as true unless contradicted by other evidence. MCR 2.116(C)(7).	"On a motion seeking summary disposition on grounds that claim is barred by immunity, the allegations set forth in the complaint must be accepted as true unless contradicted by other evidence?"	037568.docx	LEGALISE-00151748-LEGALISE-00151749	Condensed, SA, Sub 0.76	0.71	0	1	1	1	1
1307	Jones v. Trustees of Union Carbide, 38 A.D.3d 997	307A+679	As limited by his brief, plaintiff contends that Supreme Court erred in its decision to affirm the Appellate Court's decision to grant summary disposition on a motion to dismiss for failure to state a cause of action. "Courts must afford the pleadings a liberal construction, take the allegations of the complaint as true and provide plaintiff the benefit of every possible inference." (EBC I, Inc. v. Goldman, Sachs & Co., 5 NY 3d 11, 19, 799 N.Y.S.2d 170, 832 N.E.2d 26 (2005)). Here, plaintiff alleges that a contract exists between plaintiff and the College pursuant to which plaintiff agreed to pay tuition in exchange for the College's provision of educational services. Plaintiff alleges that the performance of the contract was not completed and that the contract was breached by the College when he was expelled.	In the context of a motion to dismiss for failure to state a cause of action, the allegations of the complaint as true, and provide plaintiff the benefit of every possible inference.	"In the context of a motion to dismiss for failure to state a cause of action, the allegations of the complaint as true, and provide plaintiff the benefit of every possible inference?"	Pretrial Procedure - MS_59729.docx	R055-0032:9210-1055-00339311	Condensed, SA	0.71	0	1	0	1	1
1308	Peoples Bank v. Carter, 132 S.W.3d 302	307A+680	In general, a trial court decision on a motion to dismiss for lack for subject-matter jurisdiction is a question of fact left to its sound discretion and will not be reversed on appeal absent an abuse of that discretion.	In general, a trial court's decision on a motion to dismiss for lack for subject-matter jurisdiction is a question of fact left to its sound discretion and will not be reversed on appeal absent an abuse of that discretion.	Is a trial court decision on a motion to dismiss for lack for subject-matter jurisdiction a question of fact left to its sound discretion and will not be reversed on appeal absent an abuse of that discretion?	Pretrial Procedure - NE_59773.docx	R055-0032:78403-1055-003378404	Condensed, SA	0.7	0	1	0	1	1
1309	Taylor v. Altona Area Sch. Dist., 513 F. Supp. 540	141E-880	Section of individuals with Disabilities Education Act (IDEA), providing that nothing in the Act should be construed to restrict or limit rights and remedies available under Constitution or other Federal laws, does not create a cause of action under the IDEA; such section merely recognizes the existence of other causes of action created by other statutes, and clarifies that the IDEA does not preclude plaintiffs from also pursuing remedies independently available under those statutes. Individuals with Disabilities Education Act, 61 Stat. 1205, 20 U.S.C.A. § 1415(1).	Section of individuals with Disabilities Education Act (IDEA), providing that nothing in the Act should be construed to restrict or limit rights and remedies available under Constitution or other Federal laws, does not create a cause of action under the IDEA; such section merely recognizes the existence of other causes of action created by other statutes, and clarifies that the IDEA does not preclude plaintiffs from also pursuing remedies independently available under those statutes. Individuals with Disabilities Education Act, 61 Stat. 1205, 20 U.S.C.A. § 1415(1).	How should individuals with Disabilities Education Act be construed?	037947.docx	LEGALISE-00152798-LEGALISE-00152799	Condensed, SA, Sub 0	0	0	1	1	1	1
1310	Sistema Universitario Ana G. Mendez v. Riley, 234 F.3d 772	141E-1240	In the administrative proceedings to determine eligibility of institution of higher education to participate in student financial assistance programs under Title IV of the Higher Education Act of 1965, the burden of proof is on the institution. Higher Education Act of 1965, § 400 et seq., as amended, 20 U.S.C.A. § 1070 et seq.; 34 C.F.R. § 668.116(d).	In the administrative proceedings to determine eligibility of institution of higher education to participate in student financial assistance programs under Title IV of the Higher Education Act of 1965, the burden of proof is on the institution. Higher Education Act of 1965, § 400 et seq., as amended, 20 U.S.C.A. § 1070 et seq.; 34 C.F.R. § 668.116(d).	Are all universities eligible to participate in student financial assistance programs under Title IV of Higher Education Act?	Education - Memo #133 C-HI_00334.docx	R055-0032:8891-1055-003391897	Condensed, SA, Sub 0	0	0	1	1	1	1

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1311	Annett v. Am. Honda Motor Co., 340 N.W.2d 796	307A+581	Finally, dismissal of the cause of action for failure to prosecute should be granted when, "the coming of the facts and circumstances of particular cases is such that the plaintiff has been negligent in failing to proceed with reasonable promptitude." Opp. 483 N.W.2d at 1366; Holme, 403 N.W.2d at 31-32; Durcin, 382 N.W.2d at 427; Bradbury, 129 N.W.2d at 542.	Dismissal of cause of action for failure to prosecute should be granted when, "the coming of the facts and circumstances of particular cases is such that the plaintiff has been negligent in failing to proceed with reasonable promptitude." SDCI, 15-31-11.	"Should dismissal of cause of action for failure to prosecute be granted when, the plaintiff can be charged with lack of due diligence in failing to proceed with reasonable promptitude?"	03 887 .docx Memo # 8863 - C-DA_59660.docx	LEGALASE-00152071-LEGALASE-00152072	Condensed, SA	0.29	889	15,344	14,873	21,876	9,079
1312	James Bros. Lumber Co. v. Union Banking & Tr. Co. of Du Bois, Pa., 432 Pa. 129	307A+602	The circumstances under which this discretion may properly be exercised by a court before have often been set forth. A court may properly enter a judgment of non pros. when a party to the proceeding has shown a want of diligence in failing to proceed with reasonable promptitude and there has been no compelling reason for delay, and delay has caused some prejudice to adverse party, such as death of or unexplained absence of material witness.	Court may enter judgment of non pros. when party has shown want of due diligence in failing to proceed with reasonable promptitude and there has been no compelling reason for delay, and delay has caused some prejudice to adverse party, such as death of or unexplained absence of material witness.	Can court enter judgment non pros where delay has caused prejudice to adverse party?	Pertrial Procedure - DA_59660.docx	ROSS-00293137-ROSS-00293137	Condensed, SA	0.54	0	1	0	1	
1313	Togo's Eatery of Florida v. Prothon, 320 So. 3d 939	307A+594.1	The second issue raised in this appeal is directed to the showing of good cause for the dismissal of the cause of action for failure to prosecute. The party moving to dismiss the cause of action must show that the party substantially sufficient to preclude the prosecution of the case, and is initiated by a party or by the court. In response to a party's notice or motion that advanced the cause. Nelson v. Stornell Insurance Company, 440 So.2d 664 (Fla. 1st DCA 1983). The good cause which will avoid dismissal for failure to prosecute must include contact with the opposing party and some form of excusable conduct, other than negligence or inattention to the cause of action. See, e.g., In re Estate of McConkey, 117 So.2d 401 (Fla. 1st DCA 1964); In re Estate of McConkey, 512 So. 2d 366, 267 (Fla. 1st DCA 1987). In re Estate of McConkey, 512 So. 2d 366, 267 (Fla. 1st DCA 1987). In re Estate of McConkey, 512 So. 2d 366, 267 (Fla. 1st DCA 1987).	Good cause which will avoid dismissal for failure to prosecute must include contact with the opposing party and some form of excusable conduct, other than negligence or inattention to the cause of action. RCP Rule 1.400(f).	"Should good cause which will avoid dismissal for failure to prosecute include contact with the opposing party and some form of excusable conduct other than negligence or inattention to pleading deadlines?"	038347.docx	LEGALASE-001521716-LEGALASE-001521717	Condensed, SA	0.71	0	1	0	1	
1314	Brown v. Plainfield Cmty. Consol. Dist. 202, 522 F. Supp. 4d 1088	170A+1772	To survive a motion to dismiss, a plaintiff must plead enough to "nudge" their claims across the line from conceivable to plausible. "Bell Atlantic, 127 S.Ct. at 3974. "The pleading must contain something more than a statement of a belief that the plaintiff has a claim. It must contain a short and plain statement of the facts which create a suspicion of a legally cognizable right of action. Fed. Rule Civ. Procedure 12(b)(6); 28 U.S.C.A.	To survive motion to dismiss for failure to state a claim, plaintiff must plead enough to nudge their claims across the line from conceivable to plausible; pleading must contain something more than a statement of facts that merely creates a suspicion of a legally cognizable right of action. Fed. Rule Civ. Procedure 12(b)(6); 28 U.S.C.A.	Should a pleading contain something more than a statement of facts that merely creates a suspicion of a legally cognizable right?	03 7941.docx	LEGALASE-00153429-LEGALASE-00153430	SA, Sub	0.54	0	0	1	1	
1315	Accorded Adles Div. v. Program Risk Mgmt., 447 A.D.3d 122	307A+624	Turning first to the issue of status, Supreme Court determined that employer members were not intended to be the third-party beneficiaries of the trust's agreements with PRM and PRMCS and thus dismissed plaintiffs' claims of breach of contract, breach of the duty of good faith and fair dealing and contractual indemnification as derivative. Noting our obligation at this stage of the litigation to "afford the complaint a liberal construction, accept the facts as alleged in the pleading as true, confer on the plaintiff the benefit of every possible inference and determine whether the facts as alleged fit within any cognizable legal theory, McKinney's CLR 3211(a)(7).	At the dismissal stage of litigation, a court is obligated to afford the complaint a liberal construction, accept the facts as alleged in the pleading as true, confer on the plaintiff the benefit of every possible inference and determine whether the facts as alleged fit within any cognizable legal theory, McKinney's CLR 3211(a)(7).	"At the dismissal stage of litigation, is a court obligated to afford the complaint a liberal construction?"	03 7966.docx	LEGALASE-00152310-LEGALASE-00152312	SA, Sub	0.59	0	0	1	1	
1316	Igk Indus. v. Hayes IV Bue., 145 A.D.3d 979	307A+683	On a motion to dismiss a complaint pursuant to CLR 3211(a)(7), the court must accept the plaintiff's allegations as true and construe the allegations liberally, giving the plaintiff the benefit of every possible favorable inference. McKinney's CLR 3211(a)(7).	On a motion to dismiss a complaint for failure to state a cause of action, the court must accept the plaintiff's allegations as true and construe the allegations liberally, giving the plaintiff the benefit of every possible favorable inference. McKinney's CLR 3211(a)(7).	"On a motion to dismiss a complaint pursuant to CLR 3211(a)(7) for failure to state a cause of action, should the court accept the plaintiff's allegations as true and construe the allegations liberally?"	Pertrial Procedure - Memo # 8908 - C-TN_60366.docx	ROSS-00294674-ROSS-00294675	Order, SA, Sub	0.62	1	0	1	1	1
1317	Born to Build LLC v. Saleh, 316 Misc. 3d 4590	307A+679	It is axiomatic that in determining whether a cause of action exists, the pleading must be afforded a liberal construction; the facts alleged are accepted as true, the plaintiff is accorded the benefit of every favorable inference and the court determines whether the facts alleged fit within any cognizable legal theory (Leon v. Martinez, 84 N.Y.2d 83, 614 N.Y.2d 972, 638 N.E.2d 511 [1994]; Morone v. Morone, 50 N.Y.2d 481, 429 N.Y.2d 592, 413 N.E.2d 1154 [1980]; May Cheung v. Choe Ho, 75 A.D.3d 613, 904 N.Y.S.2d 669 [3d Dep't. 2001]).	In determining whether a cause of action exists, the pleading must be afforded a liberal construction; the facts alleged are accepted as true, the plaintiff is accorded the benefit of every favorable inference, and the court determines whether the facts alleged fit within any cognizable legal theory.	"In determining whether a cause of action exists, should the pleading be afforded a liberal construction?"	Pertrial Procedure - Memo # 8954 - C-DA_60407.docx	ROSS-00323820	Condensed, SA	0.45	0	1	0	1	

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1318	Dierfliv. Normandy Assoc., 383 S.W.3d 77	307A-679	Rule 55.27(a)(6) allows a defendant to file a motion to dismiss a plaintiff's petition for failure to state a claim upon which relief can be granted. Rule 55.27(a)(6). Capbio Group, Inc. v. Collier, 365 S.W.3d 644, 647 (Mo.App. E.D.2013). "A motion to dismiss for failure to state a claim on which relief can be granted is solely a test of the adequacy of the petition." Brimwell v. Brimwell, 391 S.W.3d 391 (Mo. App. 2012) ("In reviewing whether a plaintiff fails to state a claim, a court should consider only the facts alleged in the petition." In an almost academic manner, to determine if the facts alleged meet the elements of a cause that might be adopted in that case. V.A.M.I.E. 55.27(a)(6)).	When considering whether a petition fails to state a claim upon which relief can be granted, courts review the petition in an almost academic manner to determine if the facts alleged meet the elements of a recognized cause of action, or of a cause that might be adopted in that case. V.A.M.I.E. 55.27(a)(6).	"In determining whether a petition states a claim upon which relief can be granted, does a court consider only the well pleaded facts of the petition and gives the pleading its broadest interpretation?"	038259.docx	LEGASE-00153716 LEGASE-00153717	SA, Sub	0.73	0	0	14,873	21,876	9,029
1319	Geddy v. Whitehead, 837 N.E.2d 146	307A-624	In reviewing a motion to dismiss granted pursuant to Trial Rule 12(B)(6), our standard of review is well settled. Burke v. Town of Schenerville, 739 N.E.2d 1086, 1090 (Ind.Ct.App.2000). A 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be granted tests the legal sufficiency of a claim, not the facts supporting it. Id. Therefore, we view dismissal as inappropriate where the complaint contains sufficient allegations to establish a plausible inference of the truth of the claim. Id. at 1191.	The trial court's grant of a motion to dismiss for failure to state a claim is proper if it is apparent that the facts alleged in the complaint are incapable of supporting relief under any set of circumstances, and in determining whether any facts will support the claim, the appellate court look only to the complaint and may not resort to any other evidence in the record. Trial Procedure Rule 12(B)(6).	"On a motion to dismiss for alleging facts incapable of supporting relief under any set of circumstances, can a court only look to the complaint?"	038805.docx	LEGASE-00152856 LEGASE-00152857	SA, Sub	0.71	0	0	1	1	
1320	Begay v. SCI Indus., 82 Ill. 2d 321	307A-551	Although the circuit court's dismissal of plaintiffs' actions is not authorized by the Illinois Code of Civil Procedure, the circuit court has the authority to take any action as ordered by the court's inherent authority to control its business. Plaintiffs' failure to take any action as ordered by the court's inherent authority to control its business is grounds for summary judgment. The circuit court's order granting summary judgment against that party (Leonard v. Garland [1911], 352 Ill. 300, 303, 94 N.E. 819), and as the court said in Epely v. Epely (1928), 328 Ill. 582, 585, 160 N.E. 113, 114, "The trial court may dismiss a suit for failure of complainant to prosecute it with due diligence where no sufficient cause is presented, and this power exists independent of any statute." It has therefore been recognized by various authorities, including our appellate court, that a trial court has the authority to dismiss a case for failure to prosecute. See, e.g., Leonard v. Garland (1911), 352 Ill. 300, 303, 94 N.E. 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.	Plaintiffs' failure to take any action as ordered by the court evidences want of due diligence to prosecute it with due diligence where no sufficient cause is presented, and this power exists independent of any statute.	Can a court dismiss a suit for failure of complainant to prosecute it with due diligence where no sufficient cause is presented?	Petrial Proceedare - 0381779521 W_0381779521_C- W_0381779521.docx	R055-003279551-R055-003279552	Condemned, SA	0.83	0	1	0	1	
1321	Hir v. Rifequest Healthcare, 571 B.R. 838	51-2935	As the District Court Order stated, the Ninth Circuit has adopted a functional five-factor test for courts to apply when considering whether a fee is an excise tax. The relevant factors a court must consider are: (1) the fee is an involuntary pecuniary burden, regardless of name, laid upon an individual or property; (2) the fee is imposed by or under the authority of the legislature; (3) the fee is for public purposes, including the purposes of defraying expenses of government or undertakings authorized by it; (4) the fee is imposed under the police or taxing power of the state; and (5) whether a private creditor similarly situated to the government can be paid from the assets of the debtor. See also In re Estate of Goss, 361 F.3d 1157, 1163 (9th Cir. 2004); See also In re Carpenter, 540 B.R. 691, 699 (9th Cir. BA/P 2015) stating that, "a five-part test has emerged for determining what constitutes a "507(b)(8)(B) priority excise tax.".	In deciding whether a claim warrant ed against Chapter 7 debtor as operator of skilled nursing facility, for quality assurance fee imposed under California's Medicaid program was entitled to eighth-level priority as a claim for excise tax imposed on a transaction occurring within statutory three-year "lookback" period, bankruptcy court first had to determine whether claim was for "excise tax" by applying five-pronged lorum test and considering the following factors: (1) whether fee was in nature of involuntary pecuniary burden imposed on individual or property; (2) whether it was imposed by or under authority of legislature; (3) whether fee was for public purposes; (4) whether fee was imposed under state's police or taxing power; and (5) whether fee could be paid from debtor's assets. Creditor could be hypothecated under the relevant statute, 11 U.S.C.A. § 507(b)(8)(B).	What is the test for a court to consider whether a fee is a tax?	045994.docx	LEGASE-00153251 LEGASE-00153252	Condemned, SA, Sub	0.15	0	1	1	1	

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1328	Gowen v. Bank United of Texas, 158, 701 So.3d 937	172H+1579	In this writer of doubt we turn with relief to the staff of the Federal Reserve Board, which in "official staff commentary," to which the Supreme Court has emphatically told us to give great weight in interpreting the Truth-in-Lending Act and the regulations under it, Ford Motor Credit Co. v. Milhollin, 444 U.S. 555, 565-70, 100 S.Ct. 790, 796-99, 63 L.Ed.2d 1221 (1980), has decided that "a fee for courier service charged by a settlement agent to send a document to the title company or some other party is not a finance charge, provided that the creditor has not required use of courier or retained the charge." It is entitled to some weight as interpretation of statute, despite complaint that it was issued after their transaction at issue in case. 12 C.F.R. Pt. 226, Supp. 1 comment.	Federal Reserve Board's "official staff commentary" "flatly states that the fee for courier service charged by settlement agent to send document to title creditor or some other party is not finance charge, provided that creditor has not required use of courier or retained the charge. It is entitled to some weight as interpretation of statute, despite complaint that it was issued after their transaction at issue in case. 12 C.F.R. Pt. 226, Supp. 1 comment.	Can a fee for courier service charged by a settlement agent be considered as a finance charge if the creditor has not required the use of a courier?	013955.docx	LEGAL/ASE-001555-605-LEGAL/ASE-001555-611	Condensed, SA, Sub	0.7	0	1	14,873	21,876	9,079
	Thompson v. Echostar Comm'n's Corp., 59 So. 3d 696	46H+1247	Thompson contends that because Rule 41(b) does not mention sanctions, the circuit court lacked the authority to impose sanctions. However, Thompson is mistaken. "A court has the inherent power to impose sanctions in order to protect the integrity of the judicial process." Barrett, 27 So.3d at 370 (15) (citing Myslobrod v. Whiten, 798 So.2d 352, 368 (58 Miss.2001)). Therefore, even though Rule 41(b) does not specifically mention sanctions, a court may impose lesser sanctions instead of dismissing a case for lack of prosecution. See Hoffman v. Paracelus Health Care Corp., 792 So.2d 1030, 1034 (12 Miss.1999). "Lesser sanctions include fines, costs, or damages against (a) plaintiff or his counsel, attorney disciplinary measure, conditional dismissal, dismissal without prejudice, and explicit warnings." 14 at 1035 (16) (quoting Wallace v. Jones, 572 So.2d 371, 377 (Miss.1990)).	Even though there is no provision for the dismissal of an action for failure to prosecute, a court may impose lesser sanctions including fines, costs, or damages against a plaintiff or his counsel, attorney disciplinary measures, conditional dismissal, dismissal without prejudice, and explicit warnings. Rules Civ.Proc. Rule 41(b).	"Can lesser sanctions than dismissal for a plaintiff's delay or contumacious conduct include fines, costs, or damages against plaintiff or his counsel?"	Pretrial Procedure - Memo # 10005 - C-3.docx	LEGAL/ASE-00044972-LEGAL/ASE-00044973	Condensed, SA, Sub	0.59	0	1	1	1	
1329	Zdarski v. Rykalla, 209 Minn. 385	307A+563	A dismissal under this rule is an exercise of discretionary authority which will be sustained on appeal absent a showing of clear abuse viewing the record in light most favorable to the trial court's order. Electro Nuclear Systems Corp. v. Telex Corp., 258 Minn. 576, 205 N.W.2d 127 (1973), is inapplicable. The Electro Nuclear case, 258 Minn. 576, 205 N.W.2d 127 (1973), is not a precedent for this case. The court in Electro Nuclear considered "with reference to "just, speedy, and inexpensive" disposition of the case and the policy underlying the dismissal rules of preventing harassment and unreasonable delays in litigation." Fried v. General Motors Corp., 277 Minn. 278, 283, 152 N.W.2d 364, 368 (1967).	Dismissal for failure to prosecute or to comply with rules or order of court necessarily depends upon circumstances peculiar to each case, justice and equity to each party, and must be considered with reference to just, speedy and inexpensive disposition of case and policy underlying dismissal rules of preventing harassment and unreasonable delays in litigation.	"Should justice and equity to each party be considered with reference to just, speedy and inexpensive disposition of case for dismissal for failure to prosecute?"	039153.docx	LEGAL/ASE-00155311-LEGAL/ASE-00155312	SA, Sub	0.53	0	1	1	1	
	Crown v. Fag RV, 59 A.D.3d 837	307A+685	In this procedural context, "the court must afford the pleading a liberal construction, take the allegations of the complaint as true and provide plaintiff the benefit of every possible inference" (EBC, Inc. v. Goldman Sachs & Co., 5 N.Y.3d 11, 19, 799 N.Y.S.2d 170, 832 N.E.2d 26 (2005)). "Whether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss" (Id.). When the motion to dismiss is premised upon documentary evidence, "such motion may be appropriately granted only where the documentary evidence utterly refutes plaintiff's allegations." Pratt v. Mutual Life Ins. Co. of N.Y., 88 N.Y.2d 314, 326, 746 N.Y.S.2d 858, 774 N.E.2d 1190 (2003). While factual affidavits submitted by a plaintiff may be considered to remedy defects in the complaint (see Leon v. Martinez, 84 N.Y.2d 83, 88, 614 N.Y.S.2d 972, 638 N.E.2d 511, 1994), affidavits submitted by a defendant do not constitute documentary evidence upon which a proponent of dismissal can rely (see Realty Ins. of D.C.A. v. Bhaidaswala, 254 A.D.2d 603, 604 "605, 679 N.Y.S.2d 179, 1998) (citing Pratt v. Mutual Life Ins. Co. of N.Y., 88 N.Y.2d 314, 326, 746 N.Y.S.2d 858, 774 N.E.2d 1190, at 127-28).	While factual affidavits submitted by a plaintiff may be considered to remedy defects in the complaint, affidavits submitted by a defendant do not constitute documentary evidence upon which a proponent of dismissal can rely. McKinney's CPLR 3211(c)(3).	"While factual affidavits submitted by a plaintiff can be considered to remedy defects in the complaint, do affidavits submitted by a defendant not constitute documentary evidence upon which a proponent of a dismissal can rely?"	Pretrial Procedure - Memo # 9919 - C-NE_01471.docx	RCS-003293105-RCS-003293106	SA, Sub	0.8	0	1	1	1	
1330	James Bros. Lumber Co. v. Union Banking & Tr. Co. of Du Bois, Pa., 432 Pa. 129	307A+602	The circumstances under which this discretion may properly be exercised by a Court below have often been set forth. A Court may properly enter a judgment of non pros. when a party to the proceeding has shown a want of due diligence in failing to proceed with reasonable promptitude, and there has been no compelling reason for the delay, and the delay has caused some prejudice to adverse party, such as death of or unexplained absence of material witness.	Is entry of non pros proper if party to proceeding has shown want of due diligence by failing to proceed with reasonable promptness?	Pretrial Procedure - Memo # 10042 - C-MG_62384.docx	RCS-00329298-RCS-00329299	Condensed, SA	0.54	0	1	0	1	1	
1331														
1332														

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Between Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
1333	Coleman v. Baker/Melton 324 Conn. 286 A.1.2d 924	307A-685	Defendant appeals from an order granting plaintiff's motion for summary judgment, seeking the order to be reversed and the case set aside for trial. Plaintiff did not submit an affidavit of merit until the motion to reargue. "It has long been the rule that where, as here, the delay in serving and filing the note of issue is caused or affirmatively contributed to by the defendant, its motion to dismiss should be denied without requiring plaintiff to serve an affidavit of merit." (Dicenbach v. Kissing Bridge Corp., 96 A.2d 711, 465 N.E.2d 373). It is evident from the record before us that plaintiff sought discovery in order to determine whether it could establish its case. Plaintiff's failure to cooperate with plaintiffs' discovery attempts contributed to plaintiff's delay in filing the note of issue. Thus, defendant is not entitled to dismissal of this action for failure to prosecute.	Where delay in serving and filing note of issue is caused or affirmatively contributed to by the defendant, a defense motion to dismiss should be denied without requiring plaintiff to serve an affidavit of merit.	"Where delay in serving and filing note of issue is caused or affirmatively contributed to by the defendant, should the motion to dismiss be denied without requiring a plaintiff to serve an affidavit of merit?"	02.523.docx	LEGALISE-00156388- LEGALISE-00156389	Condensed, SA, Sub	0.8	839	15,344	14,873	21,876	9,079
1334	Wilson v. Webster Ins., 234 Conn. 286	307A-685	The record reveals the following relevant factual allegations and dispositive legal issues. Plaintiff's motion to dismiss is based on the allegations in the revised complaint of July 26, 2007. Although the defendant disputes several of the material allegations, "[a] motion to dismiss admits all facts well pleaded and invokes any record that accompanies the motion." (Internal quotation marks omitted.) May v. Coffey, 291 Conn. 106, 108, 967 A.2d 495 (2009). When, as in the present case, a motion to dismiss "is accompanied by supporting affidavits containing undisputed facts, the court may look to their content for resolution of the dispositive legal issues." (Internal quotation marks omitted.) Board of Trustees of Regional Community Colleges, 207 Conn. 59, 62, 539 A.2d 1000 (1988).	When a motion to dismiss is accompanied by supporting affidavits containing undisputed facts, the court may look to their content for determination of the jurisdictional issue and need not conclusively presume the validity of the allegations of the complaint.	"When a motion to dismiss is accompanied by supporting affidavits containing undisputed facts, can the court look to their content for determination of the jurisdictional issue?"	Prtrial Procedure - Memo # 10416 - C - MS_62118.docx	R055-00293807-R055- 00139380	Condensed, SA	0.69	0	1	0	1	1
1335	Nowicki v. Cannon Steel Erection Co., 711 N.E.2d 536	307A-681	When determining whether an on-the-job injury claim should be dismissed for lack of subject matter jurisdiction, the trial court may consider the pleadings, affidavits, and any other evidence submitted. In addition, the court may weigh the evidence to determine the existence of the requisite jurisdictional facts and need not conclusively presume the validity of the allegations of the complaint. Where, as here, the trial court considers evidence in addition to the allegations in the pleadings, we review the trial court's resolution of factual disputes by determining whether its findings are clearly erroneous; that is, we consider the evidence most favorable to the plaintiff. Judgment along with the reasonable inferences to be drawn therefrom. Lawson v. Kelley Mfg., Inc., 878 N.E.2d 122, 126 (Ind. Ct.App. 1997). If the evidence is evenly balanced, the court should not draw an inference of credibility of witnesses. If a finding is clearly erroneous when the record lacks any facts or reasonable inference to support it, it is.	When determining whether an on-the-job injury claim should be dismissed for lack of subject matter jurisdiction, the trial court may consider the pleadings, affidavits, and any other evidence submitted. In addition, the court may weigh the evidence to determine the existence of the requisite jurisdictional facts and need not conclusively presume the validity of the allegations of the complaint.	"When determining whether an on-the-job injury claim should be dismissed for lack of subject matter jurisdiction, can the trial court consider the pleadings, affidavits and any other evidence submitted?"	02.884.docx	LEGALISE-00156685- LEGALISE-00156686	Condensed, SA	0.67	0	1	0	1	1
1336	Lagina-Williams v. Lagina-Williams, 46 Conn. Supp. 165	307A-685	"Jurisdiction of the subject matter is the power [of the court] to hear and determine cases of the general class to which the proceedings in question belong." (Internal quotation marks omitted.) Doe v. Roe, 246 Conn. 692, 700 (1999). "Where a court has jurisdiction of the subject matter, it may, in its discretion, dismiss a claim for failure to state a claim. A court must take the facts to be true, alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader." Pamela B. v. Ment, 244 Conn. 296, 308, 709 A.2d 1089 (1998). "Lawrence Brundl, Inc. v. Brinford, 247 Conn. 407, 410-11, 722 A.2d 271 (1999)." The motion to dismiss "...admits all facts which are well pleaded, invokes the existing record and must be decided upon that alone..." (Here, however, ... the motion is accompanied by supporting affidavits containing undisputed facts, the court may look to their content for determination of the jurisdictional issue and need not conclusively presume the validity of the allegations of the complaint." (Citation omitted; internal quotation marks omitted.) Bardev v. Board of Trustees, 207 Conn. 59, 62, 539 A.2d 1000 (1988).	Where a motion to dismiss is accompanied by supporting affidavits containing undisputed facts, the court may look to their content for determination of the jurisdictional issue and need not conclusively presume the validity of the allegations of the complaint.	"Where a motion to dismiss is accompanied by supporting affidavits containing undisputed facts, can the court look to their content for determination of the jurisdictional issue?"	Prtrial Procedure - Memo # 10416 - C - VP_63366.docx	R055-00292853-R055- 00328284	SA, Sub	0.78	0	0	1	1	1
1337	Wilbur, Mason & Vanilla v. City of Washington, 278 Ill. App. 3d 146	307A-685	When a defendant submits an affidavit in support of a motion to dismiss which controverts a well-pleaded fact in the complaint and the plaintiff fails to file a counter-affidavit, the facts set forth in the affidavit are accepted as true despite any contrary assertions in the plaintiff's complaint. (Chicago Title & Trust Co. v. Weiss (1992), 238 Ill.App.3d 921, 925, 179 Ill.Dec. 78, 605 N.E.2d 1092; Wood v. Village of Graylake (1993), 229 Ill.App.3d 343, 349-50, 170 Ill.Dec. 590, 593 N.E.2d 132.)	When defendant submits an affidavit in support of a motion to dismiss which controverts well-pleaded facts in the complaint, plaintiff fails to file counter affidavits, facts set forth in affidavit are accepted as true despite any contrary assertions in complaint.	"When a defendant submits an affidavit in support of a motion to dismiss, should the motion to dismiss be accepted as the facts set forth in the affidavit, despite any contrary assertions in complaint?"	Prtrial Procedure - Memo # 10483 - C - MS_62579.docx	R055-00298153-R055- 00339614	Condensed, SA	0.49	0	1	0	1	1
1338	Sevill v. Eschew v. Super Sons Corp., 207 Ga. App. 539	307A-685	"Our precedents establish that a defendant who files a motion to dismiss for lack of personal jurisdiction has the burden of proving lack of jurisdiction. Esterline v. Esterline, 233 Ga. 90, 200 S.E.2d 267 (1973); Smith v. Smith, 223 Ga. 551 (1955 S.E.2d 916) (1967). A motion to dismiss for lack of personal jurisdiction must be granted if there are insufficient facts to support a reasonable inference that defendant can be subjected to the jurisdiction of the court. To demonstrate that the court lacks jurisdiction, defendant may raise matters not contained in the pleadings. However, when the outcome of the motion depends on undisputed facts, the court may look to the motion and affidavits to determine the existence of jurisdictional facts. See Uniform Superior Court Rule 6.1. See also Behr v. Aero Med Int'l., 185 Ga. App. 845, 846 (366 S.E.2d 223) (1988). Further, to the extent that defendant's evidence controverts the allegations of the complaint, plaintiff may not rely on mere allegations, but must also submit supporting affidavits or documentary evidence. Uniform Superior Court Rule 6.1. (366 S.E.2d 223).	When an outcome of a motion to dismiss for lack of jurisdiction depends upon undisputed facts, should a motion be accompanied by a supporting affidavit or citations to evidentiary material in record?"	"When an outcome of a motion to dismiss for lack of jurisdiction depends upon undisputed facts, should a motion be accompanied by a supporting affidavit or citations to evidentiary material in record?"	Prtrial Procedure - Memo # 10483 - C - MS_62581.docx	R055-002928049	Condensed, Order, SA	0.61	1	1	0	1	1

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1339	MAG-T v. Travis Cent. Appraisal Dist., 161 S.W.3d 617	15A-2151	The intent of the administrative review process is to resolve the majority of tax protests at the administrative level and to relieve the burden on the court system. Webb County Appraisal Dist. v. New Laredo Head, 792 S.W.3d 952, 954 (Tex. 1990). The corollary to this rule is that judicial review of administrative orders is not available unless all administrative remedies have been pursued to the fullest extent. See id. If an agency has exclusive jurisdiction to determine a matter, a litigant's failure to exhaust all administrative remedies before seeking judicial review of the administrative body's actions deprives the court of subject matter jurisdiction over claims within the body's exclusive jurisdiction, and the court must dismiss such claims without prejudice. V.T.C.A., Government Code § 2001.171.	If an agency has exclusive jurisdiction to determine a matter, a litigant's failure to exhaust all administrative remedies before seeking judicial review of the administrative body's actions deprives the court of subject matter jurisdiction over claims within the body's exclusive jurisdiction, and the court must dismiss such claims without prejudice. V.T.C.A., Government Code § 2001.171.	"In cases where an agency has exclusive jurisdiction, should a trial court dismiss claims without prejudice until the party has exhausted all administrative remedies?"	024993.docx	LEGALASE-00157562-LEGALASE-00157563	SA, Sub	0.58	839	15,344	14,873	21,876	9,029	
1340	Rogers v. Gann, 982 So. 2d 1105	307A-650	On appeal, the former husband first argues that the trial court abused its discretion by dismissing his action for lack of prosecution. Second, he argues that even if the trial court did not abuse its discretion by dismissing his action for lack of prosecution, the trial court abused its discretion by dismissing his action with prejudice instead of without prejudice. "Dismissal of an action for want of prosecution is a drastic sanction. Accordingly, Alabama appellate courts scrutinize any order terminating an action for want of prosecution and do not hesitate to set one aside when they find an abuse of discretion. K.P. v. Reed, 626 So.2d 1241 (Ala.1992). A trial court may dismiss an action, with prejudice, for lack of prosecution only when there is a clear record of delay or dereliction of duty on the part of the plaintiff or a serious showing of willful default."	A trial court may dismiss an action, with prejudice, for lack of prosecution only when there is a clear record of delay or contumacious conduct by the plaintiff or a serious showing of willful default.	"Can a trial court dismiss an action, with prejudice, for lack of prosecution only when there is a clear record of delay or contumacious conduct by the plaintiff or a serious showing of willful default?"	Prertial Procedure - Memo # 10514 - C-11,63383.docx	ROSS-003293855-KOSS-003293856	Condensed SA	0.77	0	1	0	1	1	
1341	Indus. Comm'rs v. Ward City Appraisal Dist., 296 S.W.3d 707	307A-650	If an agency has exclusive jurisdiction to determine a matter, a litigant's failure to exhaust all administrative remedies before seeking judicial review of the administrative body's actions deprives the court of subject matter jurisdiction over claims within the body's exclusive jurisdiction, and the court must generally dismiss such claims without prejudice. V.T.C.A., Government Code § 2001.171 (Vernon 2008); Sabar v. Hines, Inc. v. Travis Central Appraisal District, 461 S.W.3d 617, 624 (Tex.App. Austin 2005, pet. denied); see Tex.Gov't Code Ann. " 311.034 (Vernon Supp. 2008) ("Statutory prerequisites to a suit, including the provision of notice, are jurisdictional requirements in all suits against a governmental entity."), taxing authorities have exclusive jurisdiction over tax disputes, and taxpayers must therefore exhaust their administrative remedies before seeking judicial review.	If an agency has exclusive jurisdiction to determine a matter, a litigant's failure to exhaust all administrative remedies before seeking judicial review of the administrative body's actions deprives the court of subject matter jurisdiction over claims within the body's exclusive jurisdiction, and the court must generally dismiss such claims without prejudice. V.T.C.A., Government Code § 2001.171.	"If an agency has exclusive jurisdiction, should a party exhaust all administrative remedies before seeking judicial review of the agency's action?"	025044.docx	LEGALASE-00156703-LEGALASE-00156704	SA, Sub	0.59	0	0	1	1	1	
1342	Esslinger v. Sun Ref. & Mktg. Co., 379 Pa. Super. 69	307A-659	The three requirements that must be satisfied in order to open a judgment of non pros are firmly established: (1) The petition to open must be promptly filed; (2) a reasonable explanation or excuse must be offered for the petitioner's defective conduct; and (3) facts constituting grounds for the petitioner's underlying cause of action must be alleged. Wurster v. Peters, 318 Pa. Super. 46, 464 A.2d 510 (1983). Geiger v. Steinbronn, pursuant to Rule 165a or its inherent powers. Ozuna v. Southwest Bldg' Clinical Lab., 766 S.W.2d 900, 901 (Tex.App. San Antonio 1989), writ denied. A court may dismiss a case for want of prosecution if the party seeking relief fails to appear for any hearing or trial of which the party had notice, Rule 165a(1); for noncompliance with time standards, Rule 165a(2); or for lack of due diligence, Rule 165a(4). The different kinds of noncompliance with time standards are distinguished by the date to appear, the clerk must send notice of the intention to dismiss and the date and place of the dismissal hearing to each attorney of record and to each party not represented by an attorney and whose address is shown on the docket or in the file papers by posting same in the United States Postal Service. Rule 165a(1).	There are three requirements that must be satisfied in order to open a judgment of non pros: petition to open must be promptly filed, reasonable explanation or excuse must be offered for petitioner's defective conduct, and facts constituting grounds for petitioner's underlying cause of action must be alleged.	Are there three requirements that must be satisfied in order to open a judgment of non pros?	025571.docx	LEGALASE-00158234-LEGALASE-00158235	Condensed SA	0.3	0	1	0	1	1	1
1343	Clark v. Yarbrough, 900 S.W.2d 406	307A-651	A trial court has the authority to dismiss a case for want of prosecution pursuant to Rule 165a or its inherent powers. Ozuna v. Southwest Bldg' Clinical Lab., 766 S.W.2d 900, 901 (Tex.App. San Antonio 1989), writ denied. A court may dismiss a case for want of prosecution if the party seeking relief fails to appear for any hearing or trial of which the party had notice, Rule 165a(1); for noncompliance with time standards, Rule 165a(2); or for lack of due diligence, Rule 165a(4). The different kinds of dismissals are cumulative and independent. Id. In the case of a failure to appear, the clerk must send notice of the intention to dismiss and the date and place of the dismissal hearing to each attorney of record and to each party not represented by an attorney and whose address is shown on the docket or in the file papers by posting same in the United States Postal Service. Rule 165a(1).	Court may dismiss case for want of prosecution if party seeking relief fails to appear for any hearing or trial of which party has notice, for noncompliance with time standards, or for lack of due diligence and each different kind of dismissal is cumulative and independent. Vernon's Ann. Texas Rules Civ.Proc., Rules 165a, 165b, subds. 1, 2, 4.	Can a court dismiss case for want of prosecution if a party seeking relief fails to appear for any hearing or trial of which a party has notice?	025794.docx	LEGALASE-00159176-LEGALASE-00159177	Condensed SA	0.62	0	1	0	1	1	1
1344	Petler v. Hawley, 30 Iowa 502	308A-6211	I would careen in useful purpose to copy herein at length the other instructions of the court in this case, but I will only state the objections in a nutshell. I may say, in answer to the objections made in argument, that it may be true, as a general proposition of law, that, if the purchaser of property, who relied upon the representations of the seller, shall receive and pay for it without objection, after he knows that the representations were false, he would be estopped from afterward claiming damage for such false representations. But, if this contract was made through an agent, and the principal was ignorant of the false representations having been made, although he knew the facts showing them false, the rule would have no just application.	While the general rule is recognized that, if the purchaser of property, who, it is claimed, relied upon the representations of the seller, shall receive and pay for it after he has learned that such representations were false, he will be estopped from afterward claiming damages on account of such false representations; it is, nevertheless, held, that this rule has no just application, if the contract was made through an agent of the purchaser, and the principal was ignorant of the false representations having been made, although he knew the facts showing their falsity.	"Is a person who knows that the representations of an agent were false estopped from afterward claiming damages for such false representations when the principal of the agent is ignorant of the false representations?"	041750.docx	LEGALASE-00158972-LEGALASE-00158978	Condensed SA, Sub	0.18	0	1	1	1	1	
1345	Brent v. Bd. of Trustees of Davis & Elkins Coll., 173 W. Va. 36	307A-658	This Court has always required good cause to be shown for reinstatement. See Aiken's, supra; Albright v. Carroll Trucking Co., 139 W. Va. 583, 82 S.E.2d 445 (1954); White Sulphur Springs, Inc. v. Jarrett, 124 W. Va. 486, 20 S.E.2d 794 (1942); Higgs v. Cunningham, 71 W. Va. 674, 77 S.E.2d 131 (1911). Thus, under Rule 4(3), in order to reinstate a cause of action which has been dismissed for failure to prosecute, the plaintiff must move for reinstatement within three terms of entry of the dismissal order and make a showing of good cause which adequately excuses his neglect in prosecution of the case.	In order to reinstate a cause of action which has been dismissed for failure to prosecute, plaintiff must move for reinstatement within three terms of entry of dismissal order and make showing of good cause which adequately excuses his neglect in prosecution of case. Rules Civ.Proc., Rule 4(3b).	"In order to reinstate a cause of action which has been dismissed for failure to prosecute, should the plaintiff move for reinstatement within three terms of entry of the dismissal order?"	039606.docx	LEGALASE-00159571-LEGALASE-00159572	Condensed Order, SA	0.51	1	1	0	1	1	

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	Gonzalez v. O'Agostino, 882 F. Supp. 2d 343	3369+124(1)	The Full Faith and Credit Clause of the United States Constitution, Art. IV, § 1, and the federal Full Faith and Credit statute, 28 U.S.C. § 783, mandate that federal courts give preclusive effect to judgments on the merits from state courts. "[T]he preclusion law of the state in which the judgment was rendered ..." governs the federal court's determination of the preclusive effect of the state court decision. <i>Vigliano v. County of Westchester</i> , No. 92 Civ. 3598 (MIL), 1998 WL 913081, at *3 (S.D.N.Y. Dec. 30, 1998) (quoting <i>Marrese v. Am. Academy of Orthopaedic Surgeons</i> , 470 U.S. 373, 380, 105 S.Ct. 1327, 84 L.Ed.2d 274 (1985)); see also <i>Matter of Anonymous v. Kaye</i> , No. 94 Civ. 2862(JPL), 1995 WL 617796, at *1 (S.D.N.Y. Oct. 19, 1995). The federal courts are required to give full faith and credit to the final judgments arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy." <i>O'Brien v. City of Syracuse</i> , 445 N.Y.S.2d 687, 688, 54 N.Y.2d 353, 429 N.E.2d 1158 (1981). However, "when a complaint is dismissed for legal insufficiency or other defect in [the] pleading, it does not act as a bar to commencement of a new action for the same relief unless the dismissal was expressly made on the merits or the new complaint fails to correct the defects or omissions fatal to the prior one." <i>D'aoon's Bench, Inc. v. Hoffman</i> , 101 A.D.2d 971, 477 N.Y.S.2d 447 (3d Dep't 11984); accord <i>Pretal Time, Inc. v. Pretal Int'l, Inc.</i> , No. 98 Civ. 154, 1998 WL 474079, at *3 (N.Y. 1. Aug. 30, 1998).	Under New York res judicata law, when a complaint is dismissed for legal insufficiency or other defect in the pleading, it does not act as a bar to commencement of a new action for the same relief unless the dismissal was expressly made on the merits or the new complaint fails to correct the defects or omissions fatal to the prior one.	When a complaint is dismissed for legal insufficiency or other defect in pleading, does it not act as a bar to commencement of a new action for the same relief?	Memorandum 12081 - C - TM_67057.docx	ROSS-003206210-ROSS-003296211	SA, Sub	0.79	839	0	1	1	1	9,029
1356															
	Bain v. Doyle, 807 P.2d 1225	413+186	Except for the owner of a private home," 848-102(1) provides that any person or other entity owning real property or improvements thereon and contracting out any work done and to said property shall be deemed an employer within the provisions of the Workers' Compensation Act. Included within the definition of employer are the employees, servants, and agents of the property owner. <i>Halter v. Waco Scaffolding & Equipment Co.</i> , 397 F.2d 790 (Colo.App.1980).	Included within definition of "employer," under statute providing that "except for owner of private home any person or other entity owning real property or improvements thereon and contracting out any work done on and to the property shall be deemed an employer under Workers' Compensation Act. Included within the definition of employer are the employees, servants, and agents of the property owner. C.R.S. 8-48-102(2) (Repealed).	"In the Workers Compensation Act, what is included within the definition of an employer?"	048761.docx	LEGALCASE-00164144-LEGALCASE-00164145	Condensed SA, Sub	0.17	0	1	1	1	1	
1357															
	City of Smithville v. Summers, 660 S.W.2d 850	1354+1	The Double Jeopardy Clause of the Fifth Amendment protects a criminal defendant against multiple punishments or successive prosecutions for the same offense. <i>United States v. Wilson</i> , 420 U.S. 332, 343, 95 S.Ct. 1033, 1037, 38 L.Ed.2d 322 (1973). That principle expresses a constitutional policy of finality for the benefit of the defendant in a criminal proceeding. It manifests the willingness of our society to limit government to a single proceeding to vindicate its vital interest in the enforcement of the criminal laws. <i>United States v. Jorn</i> , 400 U.S. 470, 479, 91 S.Ct. 547, 554, 27 L.Ed.2d 549 (1971). A criminal defendant owns the valued right to have his trial completed by a particular tribunal. Thus, the declaration of a mistrial implicates that right. <i>Wade v. Hunter</i> , 386 U.S. 684, 689, 69 S.Ct. 834, 837, 93 L.Ed. 974 (1966); <i>State v. Irving</i> , 559 S.W.2d 301, 306 (Mo.App.1977).	Double jeopardy clause expresses constitutional policy of finality for benefit of defendant in criminal proceeding, manifesting willingness of society to limit government to single proceeding to vindicate its vital interest in enforcement of criminal laws. U.S.C.A. Const. Amend. 5.	Does the double jeopardy clause limit the government to a single criminal proceeding to vindicate its vital interest in enforcement of criminal laws?	016631.docx	LEGALCASE-00165111-LEGALCASE-00165112	SA, Sub	0.69	0	0	1	1	1	
1358															
	Brentwood Acad. v. Tennessee Secondary Sch. Athletic Ass'n, 442 F.3d 410	92+4226	State interscholastic athletic association violated private high school's procedural due process rights when it imposed fine on school for allegedly violating association's recruiting rule, where association failed to give school notice that it would consider evidence regarding alleged recruiting performed by coach who was not affiliated with the school. Due process requires that a school be given a chance to respond to those issues before the penalties are imposed. U.S.C.A. Const. Amend. 14. The district court correctly concluded that in a situation such as the one presented by this case, due process requires that a school be informed of all of the issues relied on by an athletic association levying penalties against the school and be given a chance to respond to those issues before the penalties are imposed. Such a requirement imposes only a minimal burden on the state actor and would be of great value in ensuring that a school is not wrongfully penalized. Moreover, as the district court noted, such a requirement is clearly consistent with the notification requirements set out by this court and others in analogous situations.	State interscholastic athletic association violated private high school's procedural due process rights when it imposed fine on school for allegedly violating association's recruiting rule, where association failed to give school notice that it would consider evidence regarding alleged recruiting performed by coach who was not affiliated with the school, but used due diligence in its deliberations and when imposing penalties on school. U.S.C.A. Const. Amend. 14.	Are schools deprived of due process when athletic associations impose penalties on schools without providing notice or a chance to respond?	017297.docx	LEGALCASE-00164321-LEGALCASE-00164322	Condensed SA, Sub	0.59	0	1	1	1	1	
1359															
	D'Onofrio v. Robinson, 316 F. Supp. 112	141E-947	Under the Salary Supplement Act, providing for payment of state funds to teachers of secular subjects in nonpublic elementary schools, results in an excessive government entanglement with religion and thus violates the establishment clause of First Amendment. <i>Pub. Law 81-1969, c. 246; U.S.C.A. Const. Amend. 1, 14</i> . In short, we see as the necessary effects of the kind of legislation involved here not only substantial support for a religious enterprise, but also the kind of reciprocal embroilments of government and religion which the First Amendment was meant to avoid. We therefore hold that the Salary Supplement Act results in excessive government entanglement with religion and thus violates the Establishment Clause of the First Amendment. <i>15 Accord, Opinion of the Justices</i> , 261 A.2d 58 (Me. Jan. 15, 1970).	Rhode Island Salary Supplement Act, providing for payment of state funds to teachers of secular subjects in nonpublic elementary schools, results in an excessive government entanglement with religion and thus violates the establishment clause of First Amendment. <i>Pub. Laws 81-1969, c. 246; U.S.C.A. Const. Amends. 1, 14</i> .	Can a state use state fund to pay for teachers or materials of secular subjects in nonpublic schools without violating the First Amendment?	017301.docx	LEGALCASE-00164331-LEGALCASE-00164332	Condensed SA, Sub	0.62	0	1	1	1	1	
1360															

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1361	Smith v. McKee, 145 S.W.3d 299	307A+833	Appellant's first issue asserts the trial court failed to apprise Appellant of its intent to dismiss for want of prosecution. A trial court's authority to dismiss for want of prosecution stems from two sources: (1) Rule 165a of the Texas Rules of Civil Procedure and (2) the court's inherent power. See, e.g., <i>Ward v. Smith</i> , 2009 WL 2582392 (S.D. Tex. 2009); <i>Ward v. Smith</i> , 2009 WL 2582392 (S.D. Tex. 2009). Appellant argues that the trial court's dismissal under Rule 165a on "failure of any party seeking affirmative relief to appear for any hearing or trial of which the party had notice," or when a case is "not disposed of within time standards promulgated by the Supreme Court." Tex.R. Civ. P. 165a(1)-(2). In addition, the common law vests the trial court with the inherent power to dismiss independently of the rules of procedure when a plaintiff fails to prosecute his or her case.	The common law vests the inherent power to dismiss a case for want of prosecution independently of the rules of civil procedure when a plaintiff fails to prosecute his or her case with due diligence. Vernon's Ann. Texas Rules Civ.Proc., Rule 165a.	Does the common law vest the trial court with the inherent power to dismiss independently of the rules of procedure when a plaintiff fails to prosecute his or her case with due diligence?	041002.docx	LEGALCASE-00164547- LEGALCASE-00164548	SA, Sub	0.76	839	15,344	14,873	21,876	9,029
										0	0	1	1	
1362	In re Marriage of Buster, 115 S.W.3d 141	307A+835.1	A trial court has the inherent power to dismiss a case for want of prosecution, but express authority to do so is also given by Rule 165a in cases where a party plaintiff fails to appear for any scheduled hearing, or when the case is not disposed of within the time standards set by the rules of procedure. See, e.g., <i>Ward v. Smith</i> , 2009 WL 2582392 (S.D. Tex. 2009). Appellant argues that the trial court's dismissal under Rule 165a also provides a procedure for reinstatement of causes dismissed for failure to appear at any hearing. See Tex.R. Civ. P. 165a(3). The courts have held, however, that the reinstatement provision applies only to cases dismissed for failure to appear, not to cases dismissed for want of prosecution. <i>Burton v. Hoffmann</i> , 959 S.W.2d 353 (Tex.App. Austin 1998, no pet.). <i>Clark v. Hoffmann</i> , 960 S.W.2d 408 (Tex.App. Austin 1995, writ denied).	A trial court has the inherent power to dismiss a case for want of prosecution, and express authority to do so is also given by the rules of civil procedure in cases where a party plaintiff fails to appear for any scheduled hearing, or when the case is not disposed of within the time standards set by the rules of procedure. See, e.g., <i>Ward v. Smith</i> , 2009 WL 2582392 (S.D. Tex. 2009). Appellant argues that the trial court's dismissal under Rule 165a also provides a procedure for reinstatement of causes dismissed for failure to appear at any hearing. See Tex.R. Civ. P. 165a(3). The courts have held, however, that the reinstatement provision applies only to cases dismissed for failure to appear, not to cases dismissed for want of prosecution. <i>Burton v. Hoffmann</i> , 959 S.W.2d 353 (Tex.App. Austin 1998, no pet.). <i>Clark v. Hoffmann</i> , 960 S.W.2d 408 (Tex.App. Austin 1995, writ denied).	Do courts have inherent and express authority to dismiss cases for want of prosecution?	041102.docx	LEGALCASE-00164935- LEGALCASE-00164936	Condensed, SA, Sub	0.56	0	1	1	1	1
										0	1	1	1	
1363	In re Uni Imaging Holdings, 423 B.R. 406	349A+10	It then falls on the Debtor to establish any one of what have been referred to as the "residual value factors," as set forth in 13 Pa.C.S.A. § 1201(5)(i)-(j)(A-D). See <i>id.</i> , Owen, 221 B.R. at 60-61. If one or more of the residual value factors is found to exist with respect to a non-terminable "lease" agreement, then it is a disguised security agreement as a matter of law. <i>QDS Components</i> , 292 B.R. at 332, n. 9; see also <i>Gateway Ethanol</i> , 2009 WL 2582392 (S.D. Tex. 2009). Appellant argues that the courts, during its term and any one of the Residual Value Factors is present, the transaction is a sale without consideration of any other facts and circumstances. Then, if it is found that the "bright line test" has not been satisfied by the Debtor, the Court must examine whether the instant creditor, PMC, retained a meaningful residual interest at the end of the lease term. <i>QDS Components</i> , 292 B.R. at 333.	Under Pennsylvania law, if a debtor fails to meet "bright line" test by demonstrating that alleged lease is non-terminable and satisfies one or more of statutory "residual value" factors, then court, to determine whether lease is in fact a disguised security agreement, must examine whether alleged lessor retains a meaningful residual interest at end of lease term. 13 Pa.C.S.A. § 1201(5)(i)-(j)(A-D) (2007).	"If one or more residual value factors is found to exist with respect to a non-terminable "lease" agreement, then it is a disguised security agreement as a matter of law?"	042855.docx	LEGALCASE-00164471- LEGALCASE-00164472	Condensed, SA, Sub	0.55	0	1	1	1	1
										0	0	1	1	
1364	United States v. Bauman, 887 F.2d 546	1359+7	The double jeopardy clause protects a defendant's "valued right to have his trial completed by a particular tribunal." <i>O'Leary v. Brett</i> , 437 U.S. 38, 39; 98 S.Ct. 2156, 2163, 57 L.Ed.2d 24 (1978). It also bars abusive governmental conduct designed to harass a defendant through repetitive prosecution or undertaken for the purpose of increasing the likelihood of conviction.	Does the double jeopardy clause bars abusive governmental conduct designed to harass a defendant through repetitive prosecution?	Does the double jeopardy clause bars abusive governmental conduct designed to harass a defendant through repetitive prosecution?	016009.docx	LEGALCASE-00165823- LEGALCASE-00165824	SA, Sub	0.2	0	0	1	1	
										0	0	1	1	
1365	State v. Burris, 40 S.W.3d 520	1339+6	Policy underlying double jeopardy is that the state, with all its resources, should not be able to "make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense, and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty." <i>State v. Smith</i> , 871 S.W.2d 667, 671 (Tenn. 1994) (quoting <i>Greene v. United States</i> , 355 U.S. 184, 187-188, 78 S.Ct. 221, 2 L.Ed.2d 199 (1957)).	What are the three fundamental protections encompassed in the principle of double jeopardy?	What are the three fundamental protections encompassed in the principle of double jeopardy?	Double Jeopardy- Memo 918 - C- SK_67707.docx	ROSES-00238189-ROZS- 002381871	SA, Sub	0.53	0	0	1	1	
										0	0	1	1	
1366	Huensch v. LaVoie, 173 Vt. 317	307A+695	We have held that before the trial court may dismiss a complaint for failure to prosecute, the parties of the proposed action, and afford an opportunity to address the asserted grounds for dismissal, either in written form or at an oral hearing. See <i>Town of Westminster v. Hall</i> , 139 Vt. 248, 250, 128 A.2d 1095, 1096 (1981). As we explained in <i>Hall</i> , although a claim may be entirely spurious on its face, the court cannot know, without hearing the parties, whether the plaintiff may be able to amend the complaint sufficiently to state a claim for relief. <i>Id.</i> at 250-251. <i>Id.</i> see also <i>Id.</i> at 250-251, 139 Vt. 248, 250, 128 A.2d 1095, 1096 (1981). (dismissal of complaint for failure to state claim without affording party notice and opportunity to amend was error requiring reversal).	Although a claim may be entirely spurious on its face, the court cannot know, without hearing the parties, whether the plaintiff may be able to amend the complaint sufficiently to state a claim entitling the plaintiff to relief. Rules Civ.Proc. Rule 12(b)(6).	"Can the court know, without hearing the parties, whether the plaintiff may be able to amend the complaint sufficiently to state a claim entitling the plaintiff to relief?"	040846.docx	LEGALCASE-00166999- LEGALCASE-00167000	SA, Sub	0.69	0	0	1	1	
										0	0	1	1	
1367	Ferguson v. Joiner, 667 So.2d 1133	157+38(7)	Generally, an affidavit is inadmissible as hearsay. <i>Frazier v. Green Steel Building, Inc.</i> , 409 So.2d 130 (La.App. 2 Cir.1982). Furthermore, even if an affidavit is admissible as a substitute for testimony, affidavits are not admissible in evidence, and must show that the affiant is competent to testify to the matters contained therein. See La.Code Evid. art. 602; La.Code Civ.P. Art. 967; <i>Smoneaux v. E.I. du Pont De Nemours & Co. Inc.</i> , 483 So.2d 908 (La.1986). Ferguson's affidavit contains hearsay and does not show that she had personal knowledge of the number of participants in the plan at the time of her departure.	Generally, an affidavit is inadmissible as hearsay; furthermore, even if rare instances where acceptable as a substitute for testimony, affidavit must be based on personal knowledge, must set forth only facts which the affiant observed or heard about, and must show that the affiant is competent to testify to the matters contained therein. USA C.E. art. 602; LA C.C.P. art. 967.	Can the contents of an affidavit become inadmissible hearsay in the absence of an allegation of personal knowledge?	06320.docx	LEGALCASE-00078403- LEGALCASE-00078404	SA, Sub	0.49	0	0	1	1	
										0	0	1	1	

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Between Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
	Thomson v. State, 21 Wyo. 136	26-465	The information was filed under the provisions of section 3832, Comp. Stat. 1910, which provides that when an indictment charges an offense against the property of another by larceny, the jury shall ascertain and declare in their verdict the value of the property stolen, embezzled or falsely obtained, is mandatory, and applies where the accused is charged with stealing a horse, although horse stealing is declared by statute to be a felony regardless of the value of the animal stolen.	This statute, Comp. Stat. 1910, § 3832, which provides that when an indictment charges an offense against the property of another by larceny, the jury shall ascertain and declare in their verdict the value of the property stolen, embezzled or falsely obtained, is mandatory, and applies where the accused is charged with stealing a horse, although horse stealing is declared by statute to be a felony regardless of the value of the animal stolen.	"Upon conviction of larceny, embezzlement or obtaining under false pretenses, should a jury ascertain and declare in their verdict the value of the property stolen, embezzled or falsely obtained?"	05048.docx	LEGALCASE-00083899-LEGALCASE-00083100	SA, Sub	0.78	839	15,344	14,873	21,876	9,079
1368														
	Great Am. Ins. Companies v. Gordon Trucking, 165 Cal. App. 4th 445	366-219	"[E]quitable subrogation permits a party who has been required to satisfy a loss created by a third party's wrongful act to 'step into the shoes' of the loser and pursue recovery from the responsible wrongdoer. [Citation.] In the insurance context, the doctrine permits the paying insurer to be placed in the shoes of the insured and to pursue recovery from third parties responsible to the insured for the loss for which the insured was made and paid. [Citation.] Because subrogation rights are not defeated by the insured's failure to exhaust its contractual rights to which the insured has no right and can claim no right the insured does not have. [Citation.]" (United Services Automobile Ass'n v. Alaska Ins. Co. (2003) 94 Cal. App. 4th 638, 645*646, 114 Cal. Rptr. 2d 449, second & third bracketed insertions added) "The subrogated insurer is said to "stand in the shoes" of its insured, because it has no greater rights than the insured and is subject to the same defense assertable against the insured." (Travelers Casualty & Surety Co. v. American Equity Ins. Co. (803) 193 Cal. App. 3d 1241, 115, 113 Cal. Rptr. 2d 613).	"[E]quitable subrogation" permits a party who has been required to satisfy a loss created by a third party's wrongful act to "step into the shoes" of the loser and pursue recovery from the responsible wrongdoer.	Is subrogation a right which is purely derivative and it permits a party who has been required to satisfy a loss created by a third party's wrongful act to step into the shoes of the loser and pursue recovery from the responsible wrongdoer?	05608.docx	LEGALCASE-00084297-LEGALCASE-00084299	SA, Sub	0.81	0	0	1	1	
1369														
	In re Delaware R.R. Tax, 85 U.S. 206	371-1-063	The exercise of the authority which every state possesses to tax its corporations and all their property, real and personal, and their franchises, and to graduate the tax upon the corporations according to their business or income, or the value of their property, when this is not done by discriminating against rights held in other states, and the tax is levied upon the property in the state in which it is held, cannot be regarded as conflicting with any constitutional power of Congress.	The exercise of state's authority to tax its corporations and all their property and franchises and to graduate the tax on corporations according to their business or income or the value of their property when this is not done by discriminating against rights held in other states and the tax is not on imports, exports or tonnage or transportation to other states, does not conflict with any constitutional power of congress.	Does the exercise of state's authority to tax its corporations and all their property and franchises conflict with any constitutional power of congress?	11404.docx	LEGALCASE-00094448-LEGALCASE-00094450	SA, Sub	0.15	0	0	1	1	
1370														
	Pruitt v. Pruitt, 2013 IL App (1st) 130032	307A-683	For purposes of a section 2*519(a)(9) motion to dismiss, the defendant bears the initial burden to prove the affirmative matter defeating the plaintiff's claim. Epstein v. Chicago Board of Education, 178 Ill.2d 370, 383, 227 Ill. Dec. 560, 687 N.E.2d 1042 (1997). "The "affirmative matter" asserted by the defendant must be apparent on the face of the complaint and not require affidavits or discovery to be resolved." Epstein v. Chicago Board of Education, 178 Ill.2d at 383, 227 Ill. Dec. 560, 687 N.E.2d 1042." Once a defendant satisfies this initial burden of going forward on the section 2*519(a)(9) motion to dismiss, the burden then shifts to the plaintiff, who must establish that the affirmative defense asserted either is "unfounded" or requires the resolution of an essential element of material fact before it is proven. " Epstein, 178 Ill.2d at 383, 227 Ill. Dec. 560, 687 N.E.2d 1042 (quoting Keeble & 1030 Currency Exchange, Inc. v. Hodge, 156 Ill.2d 112, 116, 483 Ill. Dec. 31, 619 N.E.2d 731 (1993)).	Once a defendant satisfies the initial burden of going forward on a motion to dismiss on ground that claim is barred by other affirmative matter avoiding the legal effect of or defeating the claim, the burden then shifts to the plaintiff, who must establish that the affirmative defense asserted either is unfounded or requires the resolution of an essential element of material fact before it is proven. This burden then shifts to the plaintiff, who must establish this by presenting affidavits or other proof. S.A.A. 725 ILCS 5/2-619(a)(9) (c).	Will the burden shift to the plaintiff once the defendant satisfies the initial burden of presenting affirmative matter?	10208.docx	LEGALCASE-00095040-LEGALCASE-00095041	Condensed, SA, Sub	0.48	0	1	1	1	1
1371														
	Admiral Ins. Co. v. Arrowood Indem. Co., 471 B.R. 687	366-1	The Texas Supreme Court later clarified that there are two types of subrogation. Midf. Continent Ins. Co. v. Liberty Mut. Ins. Co., 236 S.W.3d 765, 774 (Tex.2007). Contractual (or conventional) subrogation is created by an agreement or contract that grants the right to pursue reimbursement from a third party in exchange for payment of a loss. Contractual subrogation is created by agreement and does not arise in every instance in which one person, not acting voluntarily, has paid a debt for which another was primarily liable and which in equity should have been paid by the latter. Id. (citation omitted). "In either case, the insurer stands in the shoes of the insured, obtaining only those rights held by the insured against a third party, subject to any defenses held by the third party against the insured." Id. (citation omitted). "Stowers is the only common law tort duty in the context of third party insurers according to settlement demands." Midf. Continent, 236 S.W.3d at 776. (citation omitted).	There are two types of subrogation under Texas law: "contractual subrogation," i.e., "conventional subrogation," that is created by agreement or contract that grants right to pursue reimbursement from third party in exchange for payment of loss, and "equitable subrogation," i.e., "legal subrogation," that does not depend on contract but arises in every instance in which one person, not acting voluntarily, has paid a debt for which another was primarily liable, and which in equity should have been paid by the latter.	What is the difference between legal and conventional subrogation?	043902.docx	LEGALCASE-00121084-LEGALCASE-00121085	SA, Sub	0.48	0	0	1	1	
1372														

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1373	Fort Worth Hotel Ltd. v. Fort Worth Hotel Corp., 377 S.W.2d 746	307A+3	We begin by addressing Lone Star Gas's disregard for the motion in limine. A motion in limine is a procedural device that permits a party to identify, before trial, certain topics that the court may be asked to exclude from the trial. See, e.g., <i>United States v. Williams</i> , 377 S.W.2d 331, 335 (Tex.1963). The purpose of a motion in limine is to prevent the other party from asking prejudicial questions and introducing prejudicial evidence in front of the jury without first asking the court's permission. <i>Id.</i> The trial court's ruling on a motion in limine is not a ruling that excludes or admits evidence; it is merely a tentative ruling that prohibits a party from asking a certain question or offering certain evidence. <i>Id.</i> See <i>United States v. Williams</i> , 377 S.W.2d 331, 335 (Tex.1963). See <i>Chavis v. Director</i> , 994 S.W.2d 439, 446 (Tex.App. "Beaumont" 1995, no writ). When a trial court's order on a motion in limine is violated, we review the violation to see if it is curable by instructions to the jury to disregard it. See <i>Dove v. Director, State Employees Workers' Compensation Div.</i> , 857 S.W.2d 577, 580 (Tex.App. "Houston [1st Dist.] 1993, writ denied).	Motion in limine is a procedural device that permits a party to identify, before trial, certain topics that the court may be asked to exclude from the trial. See, e.g., <i>United States v. Williams</i> , 377 S.W.2d 331, 335 (Tex.1963). The purpose of a motion in limine is to prevent the other party from asking prejudicial questions and introducing prejudicial evidence in front of the jury without first asking the court's permission. <i>Id.</i>	02418.docx	LEGALISE-0012356-LEGALISE-0012357	Condensed, SA	0.72	839	1	15,344	14,873	21,876	9,079
1374	Matter of Salfert, 112 N.C. App. 747	307A+225	Generally, the denial of a continuance, which is within the trial court's sound discretion, will not be interfered with on appeal, however, if the ruling is "manifestly unsupported by reason," it is an abuse of discretion and subject to reversal. <i>Freeman v. Monroe</i> , 93 N.C.App. 99, 101, 373 S.E.2d 443, 444 (1988). Before ruling on a motion for a continuance, the judge should hear the evidence, pro and con, consider it judicially, along with whether the moving party has acted with diligence and in good faith. <i>Shinkle</i> , 289 N.C. 473, 483, 225 S.E.2d 380, 386 (1976). N.C. Gen. Stat. § 7A-632 directly addresses the issue of continuances for a hearing involving a juvenile matter: "The judge may, for good cause, continue the hearing for as long as is reasonably required to receive additional evidence, reports, or assessments that the court has requested, or other information needed in the best interests of the juvenile and to allow for a reasonable time for the parties to conduct expeditious discovery. Otherwise, continuances shall be granted only in extraordinary circumstances, and the court shall not grant the proper denial of justice or in the best interests of the juvenile."	Before ruling on motion for continuance, judge should hear the evidence, pro and con, consider it judicially, along with whether moving party has acted with diligence and in good faith, and then rule with view to promoting substantial justice.	Pertrial Procedure - Memo # 4795 - C - NA.docx	R055-003248701-R055-003288702	Condensed, SA	0.81	0	1	0	1	1	
1375	Roman v. City of Los Angeles, 85 Cal. App. 4th 316	228+1817	A general demurrer based on the statute of limitations is only permissible where the dates alleged in the complaint show that the action is barred by the statute of limitations. (See <i>Seltzer v. Pierce Brothers Mortuaries</i> , 27979.81 Cal.App.3d 292, 300 (1997).) The dates of the complaint are not sufficient to show that the action is barred. (<i>Marshall v. Gibson, Dunn & Crutcher</i> (1995) 37 Cal.App.4th 1397, 1403, 44 Cal.Rptr.2d 339.) If the dates establishing the running of the statute of limitations do not clearly appear in the complaint, there is no ground for general demurrer. The proper remedy "is to ascertain the factual basis of the contention through discovery and, if necessary, file a motion for summary judgment...." (<i>United Western Medical Centers v. Superior Court</i> (1996) 44 Cal.App.4th 350, 355, 49 Cal.App.2d 862.)	If the dates establishing the running of a statute of limitations do not clearly appear in the complaint, the proper remedy is to ascertain the factual basis of the contention that limitations has run through discovery and, if necessary, to file a motion for summary judgment.	Pertrial Procedure - Memo # 5019 - C - SU.docx	R055-003291277-R055-003291278	SA, Sub	0.7	0	0	1	1	1	
1376	Patton v. State of N.C., 381 F.2d 636	1135H+5.1	Double jeopardy, rather than being a single doctrine, is actually comprised of three separate though related rules, prohibiting (1) prosecution for the same offense following acquittal, (2) prosecution for the same offense in <i>Green v. United States</i> , 355 U.S. 184, 78 S.Ct. 221, 18 L.Ed.2d 333 (1957), and (3) multiple punishment for the same offense. <i>Id.</i> The first rule, which prohibits prosecution of a defendant who has been acquitted at the first trial. The Court held that the double jeopardy clause precluded a retrial for first-degree murder following defendant's successful appeal from his conviction of second-degree murder, on the theory that the jury in the first trial, by returning a verdict of second-degree murder, impliedly acquitted him of the charge of first-degree murder, in a footnote, the Green majority declared without further explanation that the double jeopardy clause applied to the case. <i>Id.</i> (1957) 199 (9). "Clearly, double jeopardy," 355 U.S. 184, 96, 78 S.Ct. 221, 2 L.Ed.2d 333. There the defendant was retried for first degree murder and sentenced to death, following reversal of his prior conviction, for which he had received a sentence of life imprisonment. From a reading of the Stroud opinion, it appears that the case was argued to the Court on the theory that the defendant was put twice in jeopardy for the same offense merely by being retried on an indictment for first degree murder. There is no indication that the Court was presented with the theory that the defendant was put twice in jeopardy for the same offense merely by being a double jeopardy clause. The double jeopardy clause stands for no more than the well-established proposition that the double jeopardy clause does not entitle a defendant who successfully attacks his conviction to absolute immunity from reprosecution.	"If the dates establishing the running of a statute of limitations do not clearly appear in the complaint, is the proper remedy to ascertain the factual basis of the contention that limitations has run through discovery?"	Double Jeopardy - Memo # 728 - C - BP_68046.docx	R055-003281108-R055-003281110	Condensed, SA, Sub	0.84	0	1	1	1	1	1

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1377	Maher v. Suro, 135 Wash. 2d 356	366-1	All of the parties have argued subrogation principles resolve the issues in this case. Subrogation is an equitable doctrine, the essential purpose of which is to provide a proper allocation of payment responsibility. It seeks to ensure that the party who is responsible for a wrong or loss on the party who, in equity and good conscience, ought to bear it.	"Subrogation" is an equitable doctrine the essential purpose of which is to provide a proper allocation of payment responsibility. It seeks to ensure that the party who is responsible for a wrong or loss on the party who, in equity and good conscience, ought to bear it.	"Does the doctrine of subrogation seek to impose ultimate responsibility for a wrong or loss on the party who, in equity and good conscience, ought to bear it?"	Subrogation - Memo 137 - AMG C.docx	R055-00285516-0055-003283517	SA, Sub	0.69	0	15,344	14,873	21,876	9,079
1378	Berrot v. Primus Corp., 663 N.E.2d 464	366-1	An examination of Illinois case law supports Primus' argument. Our supreme court has recently defined the doctrine of subrogation as "a method whereby one who has involuntarily paid a debt or claim of another succeeds to the rights of the other with respect to the claim or debt." 173 Ill. Dec. 648, 597 N.E.2d 622. Earlier, this supreme court had defined the doctrine as one under which "a person who, pursuant to a legal liability, has paid for a loss or injury resulting from the negligence or wrongful act of another, will be subrogated to the rights of the injured person against such wrongdoer." [I] (Emphasis added.) Geneva Construction Co. v. Martin Transfer & Storage Co., 4 Ill.2d 273, 283, 122 N.E.2d 540 (1954). Confidential R050077876R055-003295337 & R050077876R055-003295338 are the two relevant legal opinions available to the parties. The court in the latter opinion stated that the debt of another. See, e.g., Gabler v. Renick, 188 Ill. App.3d 171, 173, 131 Ill. Dec. 769, 538 N.E.2d 1325 (1989); Inland Real Estate Corp. v. Tower Construction Co., 174 Ill. App.3d 421, 429-30, 123 Ill. Dec. 876, 528 N.E.2d 421 (1989).	Doctrine of "subrogation" is method whereby one who has involuntarily paid a debt or claim of another succeeds to the rights of the other with respect to the debt or claim so paid; it is alternatively defined as a doctrine under which a person who, pursuant to a legal liability, has paid for a loss or injury resulting from the negligence or wrongful act of another will be subrogated to the rights of the injured person against such wrongdoer.	Does subrogation allow one who involuntarily paid a debt or claim of another to succeed to the rights of the other with respect to the claim or debt so paid?	Subrogation - Memo 1539 - AMG C.docx	R055-00285516-0055-003295338	SA, Sub	0.63	0	0	1	1	
1379	Greene v. AKV (Kew), 1 Sapp.3d 1175	36-1(1)	The Supreme Court has interpreted this clause as providing for maritime litigation "all other than that involved in admiralty which is employed to enforce the right or to redress the injury involved." Lewis, 531 U.S. at 455, 121 S.Ct. 993 (citing Red Cross Line v. Atlantic Fruit Co., 284 U.S. 109, 124, 44 S.Ct. 274, 68 L.Ed. 582 (1924)). It short, the clause reserves to plaintiffs all remedies traditionally available at common law via in personam proceedings. Id. As a result, federal courts' admiralty jurisdiction "is 'exclusive' only as to those maritime causes of action begun and carried on as proceedings in rem, that is, where a vessel or other maritime property is the subject of the suit, and the cause of action or description in order to enforce a lien." Madrigal v. Superior Court of State of Cal. in & for San Diego City, 346 U.S. 556, 560 '61, 74 S.Ct. 298, 98 L.Ed. 230 (1954); see also Am. Dredging Co. v. Miller, 510 U.S. 443, 446 '47, 114 S.Ct. 981, 127 L.Ed.2d 285 (1994) ["An in rem suit against a vessel is ... distinctively an admiralty proceeding, and is hence within the exclusive province of the federal courts"]. State courts remain "competent to adjudicate maritime causes of action in proceedings in personam, and to enforce judgments in such cases by attachment or other instrument of execution." Madrigal, 346 U.S. at 561, 74 S.Ct. 298 (internal punctuation omitted).	% Federal courts' admiralty jurisdiction is exclusive only as to those maritime causes of action begun and carried on as proceedings in rem? that is, where a vessel or thing is itself treated as the offender and made the defendant by name or description in order to enforce a lien. 28 U.S.C.A. § 1333.		0810.docx	LEGALISE-00077188 LEGALISE-00077190	SA, Sub	0.79	0	0	1	1	
1380	Sykes v. First Nat. Bank, 2 S.D. 242	36-4	Defendant's counsel also insists that, as Pattee had not earned the fund at the time of the assignment, it could have no legal effect; for the want of an object upon which to operate. And they cite Halsey v. Congregation, 38 Ill. 2d 101, 109, 117, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.	The distinction between legal assignments that may be enforced in an action at law, and an equitable assignment that can only be enforced in an equitable action, seems to be this: That an assignment, to be valid as a legal assignment, must be made in writing, and must be of the whole or a part of a debt or fund in existence at the time, and of the whole thereof or of a part of a debt or fund then in existence, and the assignment or order transferring the fund must be accepted by the debtor or person holding the fund. But in an equitable assignment of a specific debt or fund, or a part of a specific debt or fund, it is not an essential element that the debt should have been earned or the fund be in issue at the time of the assignment or order transferring the debt or fund, or that the assignment be accepted by the debtor or holder of the specific fund.	What is the distinction between a legal assignment and an equitable assignment?	Assignments - Memo 19 AMA.docx	R055-00286373-0055-003296875	SA, Sub	0.66	0	0	1	1	

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Between Opinion and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
1381	In re Tillman, 345 B.R. 586	31:51-53	North Carolina has three requirements that must be met in order for a manufactured home to be considered real property (1) it is a permanent structure, (2) it has been attached to a permanent foundation, and (3) it is placed upon a permanent foundation either on land owned by the owner of the manufactured home or on land in which the owner of the manufactured home has a leasehold interest. ...N.C. Gen. Stat. § 105-273(13)(d).	North Carolina has three requirements that must be met in order for a manufactured home to be considered real property (1) it is a permanent structure, (2) it has been attached to a permanent foundation, and (3) it is placed upon a permanent foundation either on land owned by the owner of the manufactured home or on land in which the owner of the manufactured home has a leasehold interest. ...N.C. Gen. Stat. § 105-273(13)(d).	Can a manufactured home be considered as real property?	003040.docx	LEGALCASE-00116033-LEGALCASE-00116034	SA, Sub	0.41	889	15,344	14,873	21,876	9,079
										0	0	1	1	
1382	In re Felker, 211 B.R. 165	31:51-34	The holder of a life estate, i.e., a life tenant, is entitled to both the possession and the use of the property to the exclusion of the remainderman. Deffenbaugh v. Hess, 225 Pa. 638, 641, 74 A. 608 (1909). This would include the right of the life tenant to the rents, issues, and profits generated by the parcel during the tenant's life. 51 Am.Jur.2d Life Tenancy § 100 (1955). The life tenant's interest in the property is entitled to the same treatment as the interest of the remainderman. In re Nidlinger's Estate, 290 Pa. 467, 461, 139 A. 200, 202 (1927).	Holder of life estate, that is, life tenant, is entitled to both possession and use of property to exclusion of remainderman, including right to rents, issues, and profits generated by parcel during tenant's life.		000256.docx	LEGALCASE-00115997-LEGALCASE-00115998	SA, Sub	0.62	0	0	1	1	
										0	1	1	1	
1383	May v. All Defendants, 389 F.3d 119	25:1+12	We review a district court's denial of a motion to compel arbitration de novo. <i>Munick v. King Motor Co. of Fort Lauderdale</i> , 325 F.3d 1225, 1257 (11th Cir.2003). The determination of the propriety of a motion to compel arbitration pursuant to Section 4 of the Federal Arbitration Act (FAA) is a question of federal law. <i>See</i> <i>United Steelworkers of America v. Weber</i> , 405 U.S. 145, 152 (1966). The FAA's strong proarbitration policy applies to disputes that the parties have agreed to arbitrate. <i>Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.</i> , 473 U.S. 614, 616, 105 S.Ct. 3346, 3353, 87 L.Ed.2d 444 (1985). We must make this determination "by applying the 'federal substantive law of arbitrability, applicable to any arbitration agreement within the coverage of the [FAA].'" <i>Id.</i> (citation omitted). This inquiry must be undertaken against the background of a "liberal federal policy favoring arbitration agreements." <i>Moses H. Cone Mem'l Hosp. v. Calumet Gravel Co.</i> , 460 U.S. 160, 164, 103 S.Ct. 924, 927, 74 L.Ed.2d 161 (1983) ("[Q]uestions of arbitrability must be decided with a healthy regard for the federal policy favoring arbitration."). Under this policy, it is the role of courts to "ignominiously enforce agreements to arbitrate." <i>Dean Witter Reynolds, Inc. v. Byrd</i> , 470 U.S. 213, 221, 105 S.Ct. 1238, 1242, 84 L.Ed.2d 158 (1985). Because arbitration is a matter of contract, however, the FAA's strong proarbitration policy only applies to disputes that the parties have agreed to arbitrate. <i>Mastercard Int'l. v. Shearson Lehman Hutton, Inc.</i> , 534 U.S. 52, 57, 115 S.Ct. 1222, 1226, 131 L.Ed.2d 976 (1995). In <i>May</i> , the district court denied the motion to compel arbitration, and the parties to settle their dispute in an arbitral forum. <i>See</i> <i>AT&T Techs., Inc. v. Communications Workers of Am.</i> , 475 U.S. 643, 106 S.Ct. 1415, 1418, 89 L.Ed.2d 648 (1986) (citation omitted); <i>see</i> <i>Voll Info. Sys., Inc. v. Bd. of Tr. of Leland Stanford Junior Univ.</i> , 489 U.S. 468, 479, 109 S.Ct. 1248, 1256, 103 L.Ed.2d 488 ("Arbitration under the [FAA] is a matter of contract, not coercion...."). The second step in affording a motion to compel arbitration is to determine whether the dispute is within the authority of the United States. <i>Davis v. Elmiria Sav. Bank</i> , 161 U.S. 275, 283, 16 S.Ct. 502, 40 L.Ed. 700 (1896). They remain subject to state laws, but only insofar as those laws do not "prevent or significantly interfere with the national bank's exercise of its powers." <i>Barnett Bank of Marion County v. Nelson</i> , 517 U.S. 25, 33, 116 S.Ct. 1103, 134 L.Ed.2d 237 (1996). Moreover, in order to "prevent inconsistent or intrusive state regulation from impairing the national system," the National Bank Act specifically preempts state laws that "prevent or significantly interfere with" the exercise of the national bank's powers. <i>See</i> <i>Wachovia Bank, N.A. v. Burke</i> , 544 F.3d 305, 317, 12 Fed. Cir. 2005 (citing 12 U.S.C. § 484(a)), petition for cert. filed, No. 09-531 (Sept. 30, 2005). In the provision at the center of this litigation" 12 U.S.C. § 484(a) ("The National Bank Act provides No national bank shall be subject to any vitioral powers except as authorized by Federal law, vested in the courts of justice or such as shall be, or have been exercised or directed by Congress... 12 U.S.C. § 484(a) (referred to as "section 484"). Section 484 preempts state laws that "prevent or significantly interfere with" the exercise of the national bank's powers. <i>See</i> <i>Act of June 3, 1864</i> , ch. 106, § 54, 13 Stat. 59, 116.	Determination of propriety of motion to compel arbitration under Federal Arbitration Act (FAA) is two-step inquiry: first step is to determine whether parties agreed to arbitrate dispute, and second step involves deciding whether legal constraints external to parties' agreement to arbitrate would prevent or significantly interfere with the exercise of the national bank's exercise of its powers. 12 U.S.C.A. § 484(a); 12 U.S.C.A. § 54.		05003.docx	LEGALCASE-00078097-LEGALCASE-00078099	Condensed, SA, Sub	0.82	0	1	1	1	
										0	1	1	1	
1384	Office of Comptroller of the Currency, 386 F. Supp. 2d 383	17:29+9	National banks are instrumentalities of the federal government, created by Congress and subject to its authority. <i>See</i> <i>United States v. Bank of America</i> , 283 U.S. 309, 316 S.Ct. 1103, 134 L.Ed.2d 237 (1996). Moreover, in order to "prevent inconsistent or intrusive state regulation from impairing the national system," the National Bank Act specifically preempts state laws that "prevent or significantly interfere with" the exercise of the national bank's powers. <i>See</i> <i>Wachovia Bank, N.A. v. Burke</i> , 544 F.3d 305, 317, 12 Fed. Cir. 2005 (citing 12 U.S.C. § 484(a)), petition for cert. filed, No. 09-531 (Sept. 30, 2005). In the provision at the center of this litigation" 12 U.S.C. § 484(a) ("The National Bank Act provides No national bank shall be subject to any vitioral powers except as authorized by Federal law, vested in the courts of justice or such as shall be, or have been exercised or directed by Congress... 12 U.S.C. § 484(a) (referred to as "section 484"). Section 484 preempts state laws that "prevent or significantly interfere with" the exercise of the national bank's powers. <i>See</i> <i>Act of June 3, 1864</i> , ch. 106, § 54, 13 Stat. 59, 116.	"Can banks be considered as instrumentalities of the federal government for purposes of the Federal Arbitration Act (FAA)?"		Banks and Banking - Memo 20 - 15.docx	ROSS-0003011374055-003031139	SA, Sub	0.73	0	0	1	1	
										0	0	1	1	
1385	Deerfield Park Dist. v. Progress Dev. Corp., 6 Ill. 2d 286	148+46	On remand, the question was whether the taking was necessary and for a public purpose. As we stated in the prior opinion, it is conceded, as it must be, that every private owner of property holds his title subject to the power of eminent domain. The question is whether the taking is for a public purpose. The court must not substitute its judgment for that of the condemning authorities in inquiring into the necessity and propriety of the exercise of the power.	Does a private owner of property holds title subject to lawful exercise of sovereign power of eminent domain, and courts may not substitute their judgment for that of condemning authorities in inquiring into necessity and propriety of exercise of this power.		Emment Domain - Memo 27 - AAA.doc	ROSS-0002971104055-003297112	SA, Sub	0.42	0	0	1	1	
										0	0	1	1	

[illegible]

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences	
1390	Leher v. Coyne, 435 S.W.3d 423	249-31	A person subjected unjustifiably to criminal proceedings may have a cause of action for malicious prosecution. Rico, 420 S.W.3d at 439. To prevail on a malicious prosecution claim, a plaintiff must prove: (1) a criminal prosecution was commenced against him; (2) the defendant initiated or procured that prosecution; (3) the prosecution terminated in his favor; (4) he was innocent of the charges; (5) the defendant lacked probable cause to initiate the prosecution; (6) the defendant acted with malice; and (7) he suffered damages. Id. Probable cause is "the existence of such facts and circumstances as would excite belief in a reasonable mind, acting on the facts within the knowledge of the complainant, that the person charged was guilty of the crime for which he was prosecuted." Id. The probable cause element asks whether a reasonable person would believe that a crime had been committed given the facts as the complainant honestly and reasonably believed them to be before the criminal proceedings were instituted. Kroger Tex. Ltd. P'ship v. Suberu, 216 S.W.3d 788, 792-93 (Tex.2006); Revs. 420 S.W.3d at 439. Even a failure to fully and fairly disclose all material information or knowingly providing false information to the prosecutor will not defeat a claim for malicious prosecution. Febles v. Land, 55 S.W.3d 896, 899 (Tex.App. Austin 2000, pet. denied) (citing Richer v. Brookshire Grocery Co., 352 S.W.2d 515, 519 (Tex.1997)).	Even a failure to fully and fairly disclose all material information or knowingly providing false information to the prosecutor will not defeat a claim for malicious prosecution. Febles v. Land, 55 S.W.3d 896, 899 (Tex.App. Austin 2000, pet. denied).	Does a failure to fully disclose all material facts or knowingly providing false information to a public official defeat the probable cause for a malicious prosecution claim?	002924.docx	LEGALASE-00129454 LEGALASE-00129455	SA, Sub	0.61	839	0	15,344	14,873	21,876	9,079
1391	Richmond Health Facilities v. Nichols, 811 F.2d 192	360-18.15	To determine whether the FAA preempts PING, we apply the Supreme Court's most recent test in Concepcion. The Court described two situations in which a state rule is preempted by the FAA. Concepcion, 563 U.S. at 341, 131 S.Ct. 1740. First, "[w]hen state law prohibits outright the arbitration of a particular type of claim, the analysis is straightforward: The conflicting rule is displaced by the FAA." Id. Second, when a "doctrine normally thought to be generally applicable...is alleged to have been applied in a fashion that disfavors arbitration," the court must determine whether the state law rule would have a "disproportionate impact" on arbitration agreements. Id. at 341-42, 131 S.Ct. 1740. This type of preemption analysis is more difficult because it requires the court to consider the FAA's objectives." Id. at 343, 131 S.Ct. 1740.	State rule is preempted by Federal Arbitration Act (FAA) (1) when state law prohibits outright arbitration of particular type of claim, and (2) when the rule has a disproportionate impact on arbitration agreements. 9 U.S.C.A. 5.1 et seq.	"When state law and prohibits the arbitration of a particular type of claim, will the Federal Arbitration Act (FAA) displace the conflicting rule?"	002679.docx	LEGALASE-00120119 LEGALASE-00120120	SA, Sub	0.55	0	0	1	1		
1392	Offutt v. Kaplan, 884 F. Supp. 1179	384-2	Section 1940(a) is applicable to the act of obtaining or furnishing guarded information pertaining to the national defense of the United States. Gorin v. U.S., 332 U.S. 13, 61 S.Ct. 429, 85 L.Ed. 488 (1941). In Gorin the court explained: "...the information, documents or notes, which are alleged to have been connected with the national defense, may relate or pertain to the usefulness, efficiency or availability of * * * places, instrumentalities or things for the defense of the United States of America. The connection must not be a strained one nor an arbitrary one. The relationship must be reasonable and direct."	Statute addressing federal treason and sedition laws is applicable to act of obtaining or furnishing guarded information pertaining to national defense of United States government for use to advantage of any foreign nation. 38 U.S.C.A. 5794(a).	Is the act of obtaining or furnishing guarded information pertaining to the national defense of the United States government for use to the advantage of any foreign nation treason under federal treason and sedition laws?	003677.docx	LEGALASE-00120280 LEGALASE-00120281	SA, Sub	0.64	0	0	1	1		
1393	In re PHN, 560 B.R. 1	366-1	Under Massachusetts law courts look to the following factors to determine whether equitable subrogation applies:(1) the subrogee made the payment in full for the debt; (2) the subrogee was not primarily liable for the debt as a volunteer; (3) the subrogee was not primarily liable for the debt paid; (4) the subrogee paid off the entire encumbrance; and (5) the subrogee would not work any injustice to the rights of the junior lienholder. East Boston Sav. Bank v. Ogan, 428 Mass. 327, 330, 701 N.E.2d 331 (1998). Not all factors need be present for equitable subrogation to apply. Id.	In deciding whether equitable subrogation applies, Massachusetts courts look for the presence of the following factors:(1) that alleged subrogee made payment to protect his or her own interest, (2) that subrogee did not act as a volunteer, (3) that subrogee was not primarily liable for the debt not as a volunteer, (3) that subrogee was not primarily liable for the debt paid, (4) that subrogee paid off the entire encumbrance, and (5) that subrogation would not work any injustice to the rights of junior lienholder; however, not all factors need be present for equitable subrogation to apply.	What do courts look for in deciding whether equitable subrogation applies?	003595.docx	LEGALASE-00120398 LEGALASE-00120399	SA, Sub	0.1	0	0	1	1		
1394	Banchaine v. BNC Nat. Bank N.A., 2017-27166	366-27	Under traditional rules, a party seeking subrogation "would stand in the shoes" of another. United States v. Loimhan, 21 F.3d 844, 846 (8th Cir.1994). "While subrogation is generally defined as the substitution of one person in the place of another with reference to a lawful claim or right, there are actually two distinct types [1] conventional subrogation and legal subrogation, which is often confusingly called equitable subrogation, due to its origin and basis in equity." Universal Title, 942 F.2d at 1315 (citation and quotation marks omitted). Conventional subrogation is generally contractual, occurring where "one having no interest or any relation to the matter pays the debt of another, and by agreement is entitled to the rights and securities of the creditor so paid." Legal subrogation, in contrast, "has for its purpose the working out of an equitable adjustment and the doing of complete and perfect justice between the parties by securing the ultimate discharge of a debt by the person who in equity and good conscience ought to pay it."	While "subrogation" is generally defined as the substitution of one person in the place of another with reference to a lawful claim or right, under North Dakota law, there are actually two distinct types: conventional subrogation and legal subrogation, which is also called equitable subrogation, due to its origin and basis in equity.	Does subrogation substitute one person in the place of another with reference to a lawful claim or right?	043610.docx	LEGALASE-00121013 LEGALASE-00121015	SA, Sub	0.68	0	0	1	1		
1395	Hill v. Cross Country Settlements, 402 Md. 281	366-1	Subrogation is "the substitution of one person to the position of another, an obligee, whose claim he has satisfied. The basic principles underlying subrogation are the same as those in constructive trusts, prevention of merger, and equitable liens, i.e., restitution to prevent forfeiture and unjust enrichment." G.E. Capital Mortgage Servs., Inc. v. Levenson, 338 Md. 227, 231, 657 A.2d 1170, 1172 (1995) (quoting G.E. Osborne, Handbook on The Law of Mortgages - 277 (2d ed.1970)). The substituted person "can exercise no right under the same conditions and limitations as were binding on his predecessor." George L. Schneider, Jr., Inc. v. Cole Bldg. Co., 236 Md. 17, 202 A.2d 326, 330 (1964) (quoting Poe v. Phil. Cas. Co., 118 Md. 347, 84 A. 476, 478 (1912)). "Subrogation, like lien, trust, and contract, may arise by agreement of the parties. But subrogation is also a remedy invoked by courts to prevent unjust enrichment, and for this purpose it is appropriate in any case where restitution is warranted and the remedy can be given without working injustice." Dobbs, supra, - 43.	Subrogation is also a remedy invoked by courts to prevent unjust enrichment, and for this purpose it is appropriate that restitution is warranted and the remedy can be given without working injustice.	"Is subrogation also a remedy invoked by courts to prevent unjust enrichment, and for this purpose is it appropriate that restitution is warranted and the remedy can be given without working injustice?"	043704.docx	LEGALASE-00121360 LEGALASE-00121361	SA, Sub	0.82	0	0	1	1		

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Between Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
1396	Garity v. Rural Mut. Ins. Co., 77 Wis. 2d 537	366-11	Subrogation rests upon the equitable principle that one, other than a volunteer, who pays for the wrong of another should be permitted to look to the wrongdoer for reimbursement. The claimant has paid and is subject to the defenses of the wrongdoer.	Subrogation rests upon the equitable principle that one, other than a volunteer, who pays for the wrong of another should be permitted to look to the wrongdoer for reimbursement. The claimant has paid and is subject to the defenses of the wrongdoer.	"Does subrogation rest upon the equitable principle that one, other than a volunteer, who pays for the wrong of another should be permitted to look to the wrongdoer for reimbursement? The claimant has paid and is subject to the defenses of the wrongdoer?"	Subrogation - Memo # 003297386	ROSS-003297385-0055-003297386	Condensed, SA	0.76	839	15,344	14,873	21,876	9,079
			170, 166 N.W.2d 220 (1969); Interstate Fire & Casualty Co. v. Milwaukee, 48 Wis.2d 331, 334, 173 N.W.2d 187 (1970). Subrogation has also been described as putting one to whom a particular right does not legally belong in the position of the legal owner of the right. Insofar as a new right is created in favor of the subrogee, "the original right measures the extent of the new right." 4 Wisconsin Contracts sec. 1265, p. 844 (Third Edition) (1999); see also, e.g., <i>Interstate Fire & Casualty Co. v. New Amsterdam Cas. Co.</i> , 41 A2d 127, 130, 166 N.W.2d 158 (1969); <i>Northwestern N.C. Co. v. State A. & C. Underwriters</i> , 35 Wis.2d 237, 242, 151 N.W.2d 14 (1967).							0	1	0	1	
1397	Murray v. Cadre Co., 257 S.W.3d 291	366-1	benefit of this third person, so that by means of it one creditor is substituted for other rights, remedies, and securities of another. . . . First Nat'l Bank v. Ogden, 886 S.W.2d 305, 310 (Tex.App.-Houston [1st Dist.] 1994, no writ). The general purpose of equitable subrogation is to prevent unjust enrichment of the debtor. First Nat'l Bank v. O'Dell, 856 S.W.2d 410, 415 (Tex.1993). It "does not depend on a contract but arises in every instance in which one person, not acting voluntarily, has paid a debt of another person, and the payment has been made in such a way that it has been paid by the latter." <i>Hill Country Ins. Co. v. Liberty Mut. Ins. Co.</i> , 236 S.W.3d 765, 774 (Tex.2007). Texas courts are particularly hospitable to the doctrine. <i>Interfirst Bank Dallas, N.A. v. U.S. Fed. & Guar. Co.</i> , 774 S.W.2d 391, 397 (Tex.App.-Dallas 1989, writ denied); <i>LaSalle Bank Nat'l Ass'n v. White</i> , 217 S.W.3d 573, 580 (Tex. App.-San Antonio 2006), <i>rev'd in part on other grounds</i> , 246 S.W.3d 616 (Tex.2007) (<i>per curiam</i>). Texas courts have also given the doctrine "a liberal application -- broad enough to include every instance in which one person, not acting voluntarily, has paid a debt of another person, and the payment has been made in such a way that it has been paid by the latter." <i>Forrester v. Jorrie</i> , 511 S.W.2d 370, 386 (Tex.Civ.App.-San Antonio 1974, <i>writ refused</i>); see also, e.g., <i>Diversified Mortgage Investors v. Lloyd D. Baylond Gen. Contractor, Inc.</i> , 576 S.W.2d 794, 807 (Tex.1978) (<i>op. on reh'g</i>).	"Equitable subrogation" is a legal fiction whereby an obligation, extinguished by a payment made by a third person, is treated as still existing for the purpose of enabling the creditor to seek recovery from the party primarily liable? creditor is substituted to the rights, remedies, and securities of another.	Is equitable subrogation a legal fiction whereby an obligation that is extinguished by a third party is treated as still existing to enable the creditor to seek recovery from the party primarily liable?	043771.docx	LEGASE-00121621-LEGASE-00121622	Condensed, SA	0.83	0	1	0	1	
1398	Fremont Comp. Ins. Co. v. Sierra Pine, Ltd., 121 Cal. App. 4th 389	366-1	As we have explained before, "Equitable subrogation is a legal device which permits a party who has been required to satisfy a loss created by a third party's wrong to step into the shoes of the loser and recover from the wrongdoer." (<i>Transit Casualty Co. v. Spink Corp.</i> (1979) 94 Cal.App.3d 124, 132, 156 Cal.Rptr. 380, disapproved on other grounds in <i>Commercial Union Assurance Companies v. Safeway Stores, Inc.</i> (1980) 26 Cal.3d 812, 921, 164 Cal.Rptr. 709, 510 P.2d 1038). Because the subrogee steps into the shoes of the subrogor, the third party has all defenses against the subrogee that it has against the subrogor. (<i>See, e.g., The People's Fund Ins. Co. v. Maryland Casualty Co.</i> (1998) 65 Cal.App.4th 1279, 1291, 77 Cal.Rptr.2d 296; <i>Travelers</i> , supra, 149 Cal.App.3d at p. 1152, fn. 6, 197 Cal.Rptr. 416.) In contrast, indemnity "is a right which inures to a person, who without active fault on their part, has been compelled by reason of some legal obligation to pay money due to the initial negligence of another." (<i>Associated Indemnity Corp. v. Pacific Southwest Airlines</i> (1982) 128 Cal.App.3d 858, 906, 180 Cal.Rptr. 685). An indemnitee does not step into the indemnitor's shoes.	"Equitable subrogation" is a legal device which permits a party who has been required to satisfy a loss created by a third party's wrong to step into the shoes of the loser and recover from the wrongdoer.	Is equitable subrogation a legal device which permits a party who has been required to satisfy a loss created by a third party's wrong to step into the shoes of the loser and recover from the wrongdoer?	Subrogation - Memo # 893 - ES.docx	ROSS-003297381-2055-0032973818	SA, Sub	0.83	0	0	1	1	
1399	Illinois Clean Energy Cmty. Found. v. Fluor, 392 F.3d 934	148-2.1	The last argument is quickly disposed of as a basis for the state's action. Of course a state can amend its statutes; and it can also, whether by amendment or otherwise, regulate private entities extensively before it goes so far as to be deemed to have made a "regulatory taking," that is, a taking that does not transfer title to property from the owner to the state but achieves the same end by unreasonably restricting the use of the property, causing its value to be diminished. (<i>See, e.g., Penn Central Transportation Co. v. City of New York</i> , 438 U.S. 104, 98 S.Ct. 2646, 57 L.Ed.2d 631 (1978); <i>Pittman v. Chicago Board of Education</i> , 64 F.3d 1098, 1104-05 (7th Cir.1995). But obviously the state cannot lawfully enlarge its regulatory authority over private entities by amending its statutes so as to amend an existing statute rather than enacting a new one. <i>Lucas v. South Carolina Coastal Council</i> , supra, 506 U.S. at 1027-28, 112 S.Ct. 2886; <i>Bowen v. Public Agencies Opposed to Social Security Entrapment</i> , 477 U.S. 41, 54-55, 106 S.Ct. 2390, 91 L.Ed.2d 35 (1986); <i>Great Lakes Higher Education Corp. v. Owasco</i> , 911 F.2d 10, 17 (7th Cir.1990); <i>Cinenga Gardens v. United States</i> , 331 F.3d 1319, 1323-24 (Fed.Cir.2003). It cannot lawfully amend its corporation law to confiscate the assets of all corporations or to strip them of their status as corporations by virtue of a law. The fact that the legislature has amended the corporation law of the plaintiff foundation does not make the foundation a state agency for the legislature also authorizes the creation of business and professional corporations, not to mention religious and charitable corporations, without thereby acquiring a right to confiscate such entities' assets. <i>Trustees of Dartmouth College v. Woodward</i> , 4 Wheat. 518, 17 U.S. 518,	Can the state lawfully enlarge its regulatory power by deciding to take someone's property by the device of amending an existing statute rather than enacting a new one?	Can the state lawfully enlarge its regulatory power by deciding to take someone's property by the device of amending an existing statute rather than enacting a new one?	017448.docx	LEGASE-00122117-LEGASE-00122118	SA, Sub	0.72	0	0	1	1	

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1400	In re L.W., 382 Ill. App. 3d 1106	307A+3	Next, we must address the standard of review to be used to consider the evidentiary motion in this case. When the trial court granted the Public Guardian's oral motion in limine and excluded the fitness findings in L.W.'s sibling disposition orders which would support Oscar H.'s claim of parental fitness, the trial court made an evidentiary ruling. A motion in limine is a pretrial motion that seeks an order excluding inadmissible evidence and prohibiting questions concerning such evidence, without the necessity of having the questions asked and objections thereto made in front of the jury. People v. Williams, 188 Ill.2d 385, 388, 242 Ill. Dec. 260, 721 N.E.2d 539 (1999). Generally, evidentiary motions, such as motions to admit or exclude evidence, and reviewing courts will not disturb a trial court's evidentiary ruling absent an abuse of discretion. People v. Williams, 188 Ill.2d 385, 388, 242 Ill. Dec. 260, 721 N.E.2d 539 (1999). People v. Jordan, 205 Ill. App. 3d 116, 121, 150 Ill. Dec. 415, 562 N.E.2d 1218 (1990). People v. Escobar, 168 Ill. App. 3d 30, 43, 118 Ill. Dec. 736, 522 N.E.2d 391 (1988), and People v. Williams, 60 Ill. App. 3d 529, 211 Ill.2d 868, 392, 386 Ill. Dec. 124, 813 N.E.2d 1381 (2004). However, a trial court must exercise its discretion within the bounds of the law. People v. Moore, 207 Ill.2d 668, 75, 278 Ill. Dec. 36, 797 N.E.2d 631 (2003); Williams, 188 Ill.2d at 389, 242 Ill. Dec. 260, 721 N.E.2d 539. Where the question presented is one of law, a reviewing court determines it independently of the trial court's judgment. Moore, 207 Ill.2d at 75, 278 Ill. Dec. 36, 797 N.E.2d 631; Williams, 188 Ill.2d at 389, 242 Ill. Dec. 260, 721 N.E.2d 539, quoting In re Lawrence M., 172 Ill.2d 523, 526, 219 Ill. Dec. 36, 670 N.E.2d 707 (1996). In this case, whether the proper standard of review is one of law or one of fact, the reviewing court must first find the following two factors present: "(1) the material or evidence in question will be inadmissible at a trial under the rules of evidence; and (2) the more often, reference, or statements made during evidence, and (2) the more often, reference, or statements made during evidence, and (2) the more often, reference, or statements made during evidence, and (2) the more often, reference, or statements made during evidence, and (2) the more often, reference, or statements made during evidence, and (2) the more often, reference, or statements made during evidence, and (2) the more often, reference, or statements made during evidence, and (2) the more often, reference, or statements made during evidence, and (2) the more often, reference, or statements made during evidence, and (2) the more often, reference, or statements made during evidence, and (2) the more often, reference, 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1405	United States v. Cavarrella, 716 F.3d 705	63+111	However, Cavarrella argues that the Rule 404(b) evidence could only be relevant to support a conflict-of-interest theory of honest services fraud, which is no longer viable after Skilling v. United States. In Skilling, the Supreme Court held that for the honest services fraud statute, 18 U.S.C. § 1346, to survive constitutional scrutiny, it may only be interpreted to criminalize fraud based on bribes and kickbacks and not based on a failure to disclose a conflict of interest. 130 S.Ct. at 2091*33. The bribery- and kickback theory of honest services fraud requires "a quid pro quo, that is, a specific intent to give or receive something of value in exchange for an official act." United States v. Wright, 465 F.3d 560, 567-68 (3d Cir. 2012) (internal quotation marks and citations omitted). Thus, while the evidence of nondisclosure by itself may not constitute honest services fraud based on a conflict-of-interest theory under Skilling, we believe that where there is also evidence of bribery or kickbacks, as there was before the District Court, then the evidence may be relevant to proof of a scheme to defraud under a bribery-and-kickback theory of honest services fraud. Furthermore, the District Court had instructed the jury that the Government was required to prove that the scheme to defraud must be conducted through the use of bribes and kickbacks and that a government official could breach his or her duty of honest services through the use of bribes and kickbacks.	Bribery-and-kickback theory of honest services fraud requires a quid pro quo, that is, a specific intent to give or receive something of value in exchange for an official act. 18 U.S.C.A. § 1346.	Does an honest services fraud by bribery require a quid pro quo or specific intent to give or receive something of value in exchange for an official act?	01.1024.docx	LEGALASE-00123195-LEGALASE-00123197	SA, Sub	0.87	839	0	14,873	21,876	9,079	
	Petition of Borough of Boyertown, 77 Pa. CmWrt. 357	148+1.1	With respect to what constitutes a "taking" of property, the law of eminent domain has undergone great change in recent years. There has been an expansion of the number of routes for reaching a conclusion that a taking has been "taken." Certainly, a taking occurs when an entity having the power of eminent domain physically appropriates the possession or use of private property. This is what our jurisprudence has traditionally meant by the term "actual taking." See <i>Rosenblatt v. Pennsylvania Turnpike Commission</i> , 398 Pa. 111, 157 A.2d 182 (1959); <i>Lakeswood Memorial Gardens, Inc. Appeal</i> , 381 Pa. 46, 112 A.2d 135 (1955). Yet, neither physical appropriation nor a formal divestiture of an owner's title are required to create a right to eminent domain damages. The Supreme Court has held that a taking can occur when a government official has asserted that when an entity clothed with the power of eminent domain has, by even a non-appropriative act or activity, substantially deprived an owner of the beneficial use and enjoyment of his property, a taking will be deemed to have occurred. <i>Conroy-Hugh Glass Co. v. Commonwealth</i> , 456 Pa. 384, 321 A.2d 598 (1974); <i>Griggs v. Allegheny County</i> , 402 Pa. 411, 168 A.2d 121 (1961), rev'd on other grounds, 369 U.S. 84, 82 S.Ct. 531, 7 L.Ed.2d 585 (1962); see <i>Miller</i> . Such compensable circumstances have been given, rather unfortunately, the label "de facto taking."	Neither physical appropriation nor formal divestiture of an owner's title are required to create a right to eminent domain damages, and when entity clothed with power of eminent domain has, by even non-appropriative act or activity, substantially deprived owner of beneficial use and enjoyment of his property, taking will be deemed to have occurred. 28 P.S. § 1-502(e).	"What kind of taking occurs when an entity clothed with the power of eminent domain by even a non-appropriative act or activity, deprives a owner of the beneficial use and enjoyment of his property?"	01.7465.docx	LEGALASE-00122669-LEGALASE-00122670	SA, Sub	0.74	0	0	1	1	1	
1407	Glen v. Club Mediterranee S.A., 365 F. Supp. 2d 263	22+142	The act of state doctrine is a judicially-created rule of decision that "precludes the courts of this country from inquiring into the validity of the public acts a recognized foreign sovereign power committed within its own territory." <i>Banco Nacional de Cuba v. Sabbatino</i> , 376 U.S. 398, 401, 84 S.Ct. 923, 926, 11 L.Ed.2d 804 (1964). The doctrine prevents any court in the United States from declaring that an official act of a foreign sovereign performed within its own territory is invalid. <i>Kirkpatrick</i> , 493 U.S. at 405*06, 110 S.Ct. at 704*05. It "requires that 'the acts of foreign sovereigns taken within their own jurisdictions shall be deemed valid.' " <i>Fugate v. ENB Receivable Trust</i> , 263 F.3d 1274, 1293 (11th Cir.2001) (quoting <i>Kirkpatrick</i> , 493 U.S. at 409, 110 S.Ct. at 707).	The act of state doctrine is a judicially-created rule of decision that precludes courts of the United States from inquiring into the validity of the public acts a recognized foreign sovereign power committed within its own territory.	How does the act of state doctrine preclude United States courts from inquiring into the validity of the public acts a recognized foreign sovereign power committed within its own territory?	International Law - Memo #84 - C - Lk.docx	ROSS-00322619-ROSS-00322620	SA, Sub	0.7	0	0	1	1	1	
	Du Daubin v. Cisco Sys., 2 F. Supp. 3d 717	22+142	Under the doctrine, a legal action may be barred if "the relief sought or the defense interposed would have required a court in the United States to declare invalid the official act of a foreign sovereign performed within its own territory." <i>W.S. Kirkpatrick & Co., Inc.</i> , 493 U.S. at 405, 110 S.Ct. 701. The Supreme Court has cautioned that the doctrine "does not establish an exception for causes and controversies that may embarrass foreign governments, but merely requires that, in the process of deciding the acts of foreign sovereign taken within their own jurisdictions shall be deemed valid." <i>Id.</i> at 409, 110 S.Ct. 701. To determine whether the doctrine applies, <i>Sabbatino</i> articulated three factors: (1) the degree of consensus regarding a certain area of international law, (2) the extent to which the issue "touch[es]...sharply on national nerves," and (3) whether the government that perpetrated the actions is no longer in existence. 376 U.S. at 428, 84 S.Ct. 923.	Under the act of state doctrine, a legal action may be barred if the relief sought or the defense interposed would have required a court in the United States to declare invalid the official act of a foreign sovereign performed within its own territory.	Can an action be barred under the act of state doctrine if there is an official act of a foreign sovereign performed within its own territory?	01.5866.docx	LEGALASE-00123550-LEGALASE-00123551	SA, Sub	0.74	0	0	1	1	1	
1409															

ROW	Judicial Opinion	WNIS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
1410	United States v. Louisiana, 470 U.S. 93	221+138	The term "historic bay" is not defined in the Convention, and there is no complete accord as to its meaning. The Court has stated that a historic bay is a bay "over which a coastal nation has traditionally asserted and maintained dominion with the acquiescence of foreign nations." United States v. California, 381 U.S., at 172, 85 S.Ct., at 1419. See also United States v. Alaska, 421 U.S., at 189, 95 S.Ct., at 2426; Louisiana Boundary Cases v. United States, 389 U.S., at 169, 88 S.Ct. 1697, 18 L.Ed.2d 1697, 1964-1965. The Court appears to be in general agreement that at least three factors are to be taken into consideration in determining whether a body of water is a historic bay: (1) the exercise of authority over the area by the claiming nation; (2) the continuity of this exercise of authority; and (3) the acquiescence of foreign nations. See United States v. Alaska, 422 U.S., at 189, 95 S.Ct., at 2426; Louisiana Boundary Case, 389 U.S., at 23-24, n. 27, 88 S.Ct. 1697, 18 L.Ed.2d 1697. The Court also states that the United States must have effectively exercised its authority over the area consistently during a time sufficient to create a usage and have done so under the general toleration of the community of States. "Juridical Regime of Historic Waters, Including Historic Bays," 56, U.N. Doc. A/CH.4/743 (1962) (hereinafter <i>Historic Bays</i>). In addition, there is substantial agreement that a fourth factor to be taken into consideration is the vital interests of the coastal nation, including elements such as geographical configuration, economic interest, and the requirements of self-defense. See, e.g., <i>United States v. Alaska</i> , 422 U.S., at 189, 95 S.Ct. 1697, 18 L.Ed.2d 1697, 1964-1965. In the present case, the facts establish that the United States effectively has exercised sovereignty over Mississippi Sound as inland waters from the time of the Louisiana Purchase in 1803 until 1891, and has done so without protest by foreign nations.	Factor to be taken into consideration in determining whether a body of water is an historic bay is the vital interests of the coastal nation, including elements such as geographical configuration, economic interest, and the requirements of self-defense.	International law - Memo #19 - C - LC.docx	ROS-003298075-0055-003298076	SA, Sub	0.87	839	15,344	1	14,873	21,876	9,029
1411	Silks for Justice v. Math, 893 F.Supp.2d 936	221+342	First, the INC asserts immunity defenses under the act of state doctrine and the FSIA. Under the act of state doctrine, the courts of one state will not question the validity of public acts (acts <i>jure imperii</i>), performed by other sovereigns within their own borders, even when the courts have jurisdiction over a controversy in which one of the litigants has standing to challenge those acts. "Republic of Austria v. Altmann," 541 U.S. 677, 700, 124 S.Ct. 2240, 159 L.Ed.2d 411 (2004); <i>Banco Nacional de Cuba v. Sabbatino</i> , 376 U.S. 398, 440, 84 S.Ct. 923, 11 L.Ed.2d 804 (1964) ("The act of state doctrine in its traditional formulation precludes the courts of this country from inquiring into the validity of the public acts a recognized foreign sovereign power committed within its own territory."). Although there is no general federal common law, there are evidences of federal judge-made law. <i>Banco Nacional de Cuba v. Sabbatino</i> , 376 U.S. 398, 426, 84 S.Ct. 923, 11 L.Ed.2d 804 (1964). One such evidence concerns the law of international relations and foreign affairs. <i>Id.</i> at 427, 84 S.Ct. 923. A long-standing common law principle, the act of state doctrine precludes courts from evaluating the validity of actions that a foreign sovereign has taken within its own territory. <i>Id.</i> at 401, 84 S.Ct. 923; <i>Id.</i> at 409, 110 S.Ct. 701; <i>Sabbatino</i> , 376 U.S. at 401, 84 S.Ct. 923; <i>Underhill v. Hernandez</i> , 168 U.S. 250, 252, 18 S.Ct. 83, 42 L.Ed. 456 (1897); see also <i>Timberlane Lumber Co. v. Bank of America</i> , 549 F.2d 597, 605-07 (9th Cir.1976) (recounting history of the doctrine); <i>Born and Bradtke</i> , <i>International Civil Litigation in United States Courts</i> 751-55 (2007) (same). The doctrine reflects the concern that the judiciary, by questioning the validity of sovereign acts taken by foreign states, may interfere with the executive branch's conduct of foreign policy. <i>Id.</i> at 405, 110 S.Ct. 701. As a result, the doctrine requires that the "official act of a foreign sovereign performed within its own territory" becomes "a rule of decision for the courts of this country." <i>Id.</i> at 405, 110 S.Ct. 701 (quoting <i>Rcaud v. American Metal Co.</i> , 246 U.S. 304, 310, 38 S.Ct. 312, 62 L.Ed. 733 (1918)).	Under the act of state doctrine, the courts of one state will not question the validity of public acts, acts <i>jure imperii</i> , performed by other sovereigns within their own borders, even when the courts have jurisdiction over a controversy in which one of the litigants has standing to challenge those acts.	"Under the act of state doctrine, will the courts of one state question the validity of public acts, (acts <i>jure imperii</i>), performed by other sovereigns within their own borders?"	020044.docx	LEGALSER-0023482-LEGALCASE-0023483	SA, Sub	0.62	0	0	1	1	1
1412	Provident Gov't of Marinduque v. Placer Dome, 582 F.3d 1083	92+2551	Although there is no general federal common law, there are evidences of federal judge-made law. <i>Banco Nacional de Cuba v. Sabbatino</i> , 376 U.S. 398, 426, 84 S.Ct. 923, 11 L.Ed.2d 804 (1964). One such evidence concerns the law of international relations and foreign affairs. <i>Id.</i> at 427, 84 S.Ct. 923. A long-standing common law principle, the act of state doctrine precludes courts from evaluating the validity of actions that a foreign sovereign has taken within its own territory. <i>Id.</i> at 401, 84 S.Ct. 923; <i>Id.</i> at 409, 110 S.Ct. 701; <i>Sabbatino</i> , 376 U.S. at 401, 84 S.Ct. 923; <i>Underhill v. Hernandez</i> , 168 U.S. 250, 252, 18 S.Ct. 83, 42 L.Ed. 456 (1897); see also <i>Timberlane Lumber Co. v. Bank of America</i> , 549 F.2d 597, 605-07 (9th Cir.1976) (recounting history of the doctrine); <i>Born and Bradtke</i> , <i>International Civil Litigation in United States Courts</i> 751-55 (2007) (same). The doctrine reflects the concern that the judiciary, by questioning the validity of sovereign acts taken by foreign states, may interfere with the executive branch's conduct of foreign policy. <i>Id.</i> at 405, 110 S.Ct. 701. As a result, the doctrine requires that the "official act of a foreign sovereign performed within its own territory" becomes "a rule of decision for the courts of this country." <i>Id.</i> at 405, 110 S.Ct. 701 (quoting <i>Rcaud v. American Metal Co.</i> , 246 U.S. 304, 310, 38 S.Ct. 312, 62 L.Ed. 733 (1918)).	Act of state doctrine reflects the concern that the judiciary, by questioning the validity of sovereign acts taken by foreign states, may interfere with the executive branch's conduct of foreign policy.	"Does the act of state doctrine reflect the concern that the judiciary, by questioning the validity of sovereign acts taken by foreign states, may interfere with the executive branch's conduct of foreign policy?"	International law - Memo #239 - C - AP.docx	ROS-003284741-0055-003284743	SA, Sub	0.86	0	0	1	1	1
1413	Dow v. Unocal Corp., 395 F.3d 932	221+342	Unocal also argues that Plaintiff's claims against it are barred by the "act of state" doctrine. The act of state doctrine is a non-judicial, prudential doctrine based on the notion that the courts of one country will not sit in judgment on the acts of the government of another, done within its own territory. "Underhill v. Hernandez," 168 U.S. 250, 252, 18 S.Ct. 83, 42 L.Ed. 456 (1897). "Act of state issues only arise when a court must decide that is, when the outcome of the case turns upon the effect of a sovereign's official acts within its own territory." <i>Id.</i> at 252, 18 S.Ct. 83, 42 L.Ed. 456 (1897). As long as this requirement is met, the act of state doctrine can be invoked by private parties such as Unocal. See, e.g., <i>Credit Suisse v. United States Dist. Court</i> , 130 F.3d 1342, 1348 (9th Cir.1997). In the present case, an act of state issue arises because the court must decide that the conduct by the Myanmar Military violated international law in order to hold Unocal liable for aiding and abetting that conduct. We conclude that the act of state doctrine does not bar Unocal's claims. <i>See</i> <i>Id.</i> v. <i>Republic of China</i> , 892 F.2d 1419, 1424 (9th Cir.1990).	The act of state doctrine is a non-judicial, prudential doctrine based on the notion that the courts of one country will not sit in judgment on the acts of the government of another, done within its own territory.	"The act of state doctrine is a non-judicial, prudential doctrine based on the notion that the courts of one country will not sit in judgment on the acts of the government of another, done within its own territory?"	International law - Memo #254 - C - ANC.docx	ROS-003283912-0055-003283914	Condensed, SA	0.82	0	1	0	1	1

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1419	T&E Co. v. S. Nat. Bank of S.C., 125 N.C. App. 600	307A-3	While the North Carolina Rules of Evidence do not explicitly provide for motions in limine, their use in North Carolina is well recognized. State v. Conway, 339 N.C. 487, 453 S.E.2d 824, 846-48 (1995). Rulings on these motions, however, are merely preliminary and subject to change during the course of trial, depending upon the actual evidence offered at trial and thus objection to order granting or denying motion is insufficient to preserve for appeal the question of the admissibility of evidence. Id. A party objecting to an order granting or denying a motion in limine is not preserving the issue for appeal. The issue is not preserved to be argued on appeal to object to the evidence at the time it is offered at the trial (where the motion was denied) or attempt to introduce the evidence at the trial (where the motion was granted). Conway, 339 N.C. at 521, 453 S.E.2d at 846 (motion denied); Beaver v. Hampton, 106 N.C. App. 172, 177, 416 S.E.2d 8, 11 (1992) (motion denied, modified on other grounds, 333 N.C. 455, 427 S.E.2d 317 (1993)); Morris v. Bailey, 86 N.C. App. 378, 383, 358 S.E.2d 120, 123 (1987) (motion allowed). On appeal the issue is not whether the granting or denying of the motion in limine was error, as the issue is not preserved for appeal. The issue is whether the evidentiary rulings of the trial court made during the trial are error.	Rulings on motions in limine are merely preliminary and subject to change during course of trial, depending upon actual evidence offered at trial, and thus objection to order granting or denying motion is insufficient to preserve for appeal the question of the admissibility of evidence.	Is a trial court's ruling on a motion in limine preliminary and is subject to change depending on the actual evidence offered at trial?	028860.docx	LEGALASE-00122939- LEGALASE-00122940	Condensed, SA	0.79	0	1	0	1	21,676	9,029
1420	Duran v. Hyundai Motor Am., 271 S.W.3d 178	307A-3	A motion in limine regarding a request for guidance from the trial court prior to trial provides an evidentiary question which the court may provide, at its discretion, to aid the parties in formulating their trial strategy. Pulliam v. Robette, 174 S.W.3d 124, 136 n. 12 (Mo. 2004) (quoting United States v. Williams, 11 F.3d 1236, 1239 (6th Cir. 1983); 18 Fed. Supp. 569, 345, 144 F.10th Cr. 1995); Hurt v. K-Mart Corp., 294 Mont. 444, 981 P.2d 275, 276 [1998]; see also 1 McCormick on Evidence "52, at 255'58 (Kenneth S. Brouned, 6th ed. 2006) ["McCormick on Evidence"; Neil P. Cohen et al., Tennessee Law of Evidence ", 1.03[d](f), at 1720 to 1721 (5th ed. 2005)] ("Tennessee Law of Evidence "); It enables the trial court, prior to trial, to exclude anticipated evidence that would clearly be inadmissible for any purpose at trial. Jonasson v. Lutheran Child & Family Servs., 115 F.3d 436, 440 (7th Cir. 1997); Forsyth County v. Martin, 279 Ga. 215, 610 S.E.2d 522, 518 (Ga. 2005); In re Estate of Gaudin, 2005 WL 1924266 (S.D.N.Y. 2005); Premium Cigars Int'l, Ltd. v. Farmer/Buller Lawfirm Pcs., Agency, 208 Ariz. 557, 98 P.3d 555, 570 (Cl.App. 2004).	"A motion in limine" provides a vehicle for requesting guidance from the trial court prior to trial regarding an evidentiary question which the court may provide, at its discretion, to aid the parties in formulating their trial strategy.	"Is a "motion in limine" a request for guidance by the court regarding an evidentiary question, which the court may provide at its discretion to aid the parties in formulating trial strategy?"	029151.docx	LEGALASE-00122980- LEGALASE-00122981	SA, Sub	0.8	0	0	1	1		
1421	Honaker v. Mahon, 210 W. Va. 53	307A-3	The purpose of a motion in limine is to prevent an opposing party from asking prejudicial questions, or introducing prejudicial evidence, in front of the jury without asking the trial court's permission. Jurisdiction are generally in agreement that a deliberate and intentional violation of a general prohibition against asking prejudicial questions constitutes an introduction of prejudicial evidence, is a ground for reversing a jury's verdict. However, "[i]n order for a violation of an in limine motion to serve as the basis for a new trial, the order must be specific in its prohibitions, and violations must be clear." (Kierstead v. Ravellotte Publications, Inc., 517 N.W.2d 419, *26 (S.D.1994).	The purpose of a motion in limine is to prevent an opposing party from asking prejudicial questions, or introducing prejudicial evidence, in front of the jury without asking the trial court's permission.	"Is the purpose of a motion in limine to prevent an opposing party from asking prejudicial questions, or introducing prejudicial evidence, or introducing prejudicial evidence, in front of the jury without asking the trial court's permission?"	Pretrial Procedure - Memo #66 - C - VA.docx	ROSS-003283962-ROSS-003283963	Condensed, SA	0.71	0	1	0	1		
1422	Quard City Bank & Tr. v. N.A.M.A., 804 N.W.2d 833	38B-9(1)	A ruling sustaining a motion in limine is generally not an evidentiary ruling because it does not involve the admission or exclusion of evidence. A ruling sustaining a motion in limine simply adds a procedural step to the introduction of allegedly objectionable evidence. Id.; accord Johnson v. Interstate Power Co., 481 N.W.2d 310, 317 (Iowa 1992) (recognizing a ruling sustaining a motion in limine "merely adds a procedural step to the offer of evidence [and that] if the evidence is not offered, there is nothing preserved to review on appeal"). Thus, a motion in limine "serves the useful purpose of raising and pointing out before trial certain evidentiary rulings the court may be called upon to make during the course of the trial." Id. A ruling sustaining a motion in limine is not an evidentiary ruling until its admissibility is determined by the trial court outside the presence of a jury, in an offer of proof. Twoford, 220 N.W.2d at 922-23 (recognizing further that the offer of proof allow the aggrieved party to present a proper record for review on appeal and, in the absence of such an offer, error may not be preserved).	A motion in limine serves the useful purpose of raising and pointing out before trial certain evidentiary rulings the court may be called upon to make during the course of the trial, and thus objection to order granting or denying motion is reference or introduction of this evidence until its admissibility is determined by the trial court, outside the presence of a jury, in an offer of proof.	What useful purpose does a motion in limine serve?	Pretrial Procedure - Memo 373 - RC.docx	ROSS-003303601-ROSS-003303606	SA, Sub	0.67	0	0	1	1		

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	Inland Empire Rural Electrification v. Dnpi of Pub. Serv. of Washington, 199 Wash. 527	317a+112	A corporation becomes a public service corporation, subject to regulation by the department of public service, only when, and to the extent that, its business is dedicated or devoted to a public use. The test to be applied is whether or not the corporation holds itself out, expressly or impliedly, to supply its service or product for use either by the public as a class or by that portion of it that can be served by the utility, or whether, on the contrary, it merely offers to serve only particular individuals of its own selection. <i>Clark v. Olson</i> , 177 Wash. 237, 31 P.2d 534, 93 A.L.R. 240; <i>Van Hooser v. Railroad Commission</i> , 184 Cal. 553, 194 P. 1003; <i>Mound Water Co. v. Southern California Edison Co.</i> , 184 Cal. 602, 194 P. 1014; <i>Richardson v. Railroad Commission</i> , 191 Cal. 716, 218 P. 418; <i>Stoebe v. Natatorium Co.</i> , 34 Idaho 217, 200 P. 132; <i>Humbird Lumber Co. v. Public Utilities Commission</i> , 39 Idaho 505, 228 P. 271; <i>State Public Utilities Commission ex rel. Mason County Telephone Co. v. Bethany Mut. Telephone Ass'n</i> , 270 Ill. 183, 110 N.E. 334, Ann.Cas.1917-8, 495; <i>State Public Utilities Commission ex rel. Evansville Telephone Co. v. Otaw Valley Mut. Telephone Ass'n</i> , 282 Ill. 336, 118 N.E. 760; <i>Hinds County Water Co. v. Scanton</i> , 159 Miss. 757, 132 So. 597; <i>State ex rel. Buffum Telephone Co. v. Public Service Commission</i> , 272 Mo. 627, 640, 199 S.W. 962, 965, L.R. A1318C, 820; <i>State ex rel. M. O. Drueiger & Co. v. Public Service Commission</i> , 275 Mo. 483, 205 S.W. 36, 18 A.L.R. 754; <i>State ex rel. Lohman & Farmers Mut. Telephone Co. Brown</i> , 323 Mo. 818, 19 S.W.2d 1048; <i>State v. Southern Elkhorn Telephone Co.</i> , 106 Neb. 342, 183 N.W. 562; <i>Overlook Development Co. v. Public Service Commission</i> , 306 Pa. 43, 158 A. 869; <i>Dairyman's Co-Op. Sales Ass'n v. Public Service Commission</i> , 318 Pa. 381, 177 A. 770; 38 A.L.R. 218; <i>Schumacher v. Railroad Commission</i> , 185 Mo. 330, 201 N.W. 241.	A corporation becomes "public service corporation," subject to regulation by state public service department, only when and to extent that its business is dedicated or devoted to public use, and test to be applied is whether corporation holds itself out, expressly or impliedly, to supply its service or product for use by public or portion thereof which can be served by utility or merely offers to serve particular individuals of its own selection. <i>Ham v. New Stat.</i> , 53 10359-10459.	Does a corporation become a public service corporation only when it becomes devoted to public use?	042238.docx	LEGALSE-0012331-LEGALSE-0012332	SA, Sub	0.74	0	839	15,344	14,873	21,876	9,029
	1423														
	In re Weider, 192 B.R. 109	366+711	When a surety satisfies the debt of another, the surety acquires all rights that the original creditor had against the debtor. "There are few doctrines better established than that a surety who pays the debt of another is entitled to all rights of the person he paid to enforce his right to be reimbursed." <i>Pearlman v. Reliance Ins. Co.</i> , 371 U.S. 132, 136-37, 83 S.Ct. 232, 235, 9 L.Ed.2d 130 (1962). See also <i>Federal Land Bank of Baltimore v. Fidelity & Deposit Co. of Maryland</i> , 375 U.S. 175, 176, 24 L.Ed.2d 139, 140, 40 S.Ct. 324, 344, 178 F.2d 586, 62-1 USTC ¶13,714, 199-1 C.M.B. 301 (Md. App. 1991). <i>Capital Mortgage</i> , 101 Md.App. 122, 132, 643 A.2d 505, 510 (1994). This principle is known as the doctrine of equitable subrogation. There is both legal and equitable subrogation. While one is grounded in law and the other in equity, both types arise through contract and place a party satisfying the debt of another in the shoes of the original creditor. <i>Rinn v. First Union National Bank of Maryland</i> , 176 B.R. 407, 407-408 (D.Md.1995), affirming <i>sub nom. In re Advance Insulation & Supply, Inc.</i> , 176 B.R. 390 (Bankr. D.Md.1994) and <i>Citing Security Ins. Co. v. Mangin</i> , 250 Md. 241, 242 A.2d 482, 485 (1968). While the terms surety and guarantor are not identical, equitable subrogation applies to both. <i>Davis v. Wells, Fargo & Co.</i> , 104 U.S. 159, 169, 26 L.Ed. 686 (1881); <i>Colonial Am. Nat. Bank v. Kosowski</i> , 617 F.2d 1025, 1029-30 (4th Cir.1980) (Munnighan, J., dissenting opinion); <i>Weitz v. Marmm</i> , 34 Md.App. 115, 121, 366 A.2d 866, 89 (1976) (citing <i>Hooper v. Hooper</i> , 81 Md. 155, 31 A. 508 (1895)).	Under Virginia law, while legal subrogation is grounded in law and equitable subrogation is grounded in equity, both types arise through contract and place party satisfying debt of another in shoes of original creditor.	"While legal subrogation is grounded in law and equitable subrogation is grounded in equity, do both types arise through contract and place the party satisfying the debt of another in the shoes of the original creditor?"	Subrogation - Memo # 961 - C -MLS.docx	ROSS-003298052-ROSS-003298053	SA, Sub	0.86	0	1	1	1		
	1424														
	Collateral Inv. Co. v. Pigm, 423 So. 2d 1274	366+731	The elements of equitable subrogation are as follows: (1) the money is advanced at the instance of the debtor in order to extinguish a prior incumbrance; (2) the money is used for that purpose with just expectation on the part of the lender for obtaining security of equal dignity with the prior incumbrance; (3) the whole debt must be paid before subrogation can be enforced; (4) the lender must be ignorant of the intervening liens; and (5) the intervening lienor must not be insured or embarrassed. <i>Federal Land Bank v. Metropolitan Life Insurance Co.</i> , 410 So. 2d 829 (1996); <i>Whitson v. Metropolitan Life Insurance Co.</i> , 410 So. 2d 832, 142 So. 864 (1992).	Elements of equitable subrogation are that money is advanced at instance of debtor in order to extinguish prior incumbrance, that money is used for such purpose with just expectation on part of lender for obtaining security of equal dignity with prior incumbrance, that whole debt must be paid before subrogation can be enforced, that lender must be ignorant of intervening liens and that intervening lienor must not be insured or embarrassed.	What requirements must be met for equitable subrogation to apply?	04346.docx	LEGALSE-00123361-LEGALSE-00123362	SA, Sub	0.34	0	0	1	1		
	1425														
	United States v. Hernandez, 864 F.3d 1292	221+222	Some background helps explain why. Under international law, a nation may lack power to punish criminally the actions of a foreign citizen outside its territory, such that the nation whose national is tried may protest its jurisdiction. F.T.C. v. Compagnie des Saint-Gobain-Pont-aux-Francais, 636 F.2d 1300, 1315 (D.C. Cir. 1980). In addition, under international law a nation may lack power to go on the territory of a foreign state without consent to seize a person, even a national of the seizing state, such that the state whose territory is violated may protest diplomatically. These limits fall under the rubric of a nation's jurisdiction to enforce. Id. at 1305-06. See generally Restatement (Second) of the Foreign Relations Law of the United States ¶ 6 cmt. a (1965).	Limits on a nation's jurisdiction to prescribe, under international law, deprive a nation of power to punish criminally the actions of a foreign citizen outside its territory, such that the nation whose national is tried may protest diplomatically. These limits fall under the rubric of a nation's jurisdiction to prescribe. F.T.C. v. Compagnie Des Saint-Gobain-Pont-aux-Francais, 636 F.2d 1300, 1315 (D.C. Cir. 1980). In addition, under international law a nation may lack power to go on the territory of a foreign state without consent to seize a person, even a national of the seizing state, such that the state whose territory is violated may protest diplomatically. These limits fall under the rubric of a nation's jurisdiction to enforce. Id. at 1305-06. See generally Restatement (Second) of the Foreign Relations Law of the United States ¶ 6 cmt. a (1965).	"Under international law, does a nation lack power to punish criminally the actions of a foreign citizen outside its territory due to limits on a nation's jurisdiction to prescribe?"	015694.docx	LEGALSE-00125178-LEGALSE-00125179	Condensed, SA, Sub	0.61	0	1	1	1		
	1426														

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1427	<i>Glenn v. Club Med Enterprises S.A.</i> , 353 F. Supp. 2d 1263	221+42	Unlike foreign sovereign immunity, the act of state doctrine affects the validity of a claim against a foreign state. The act does not simply preclude a claim against a foreign state, but rather, it bars the claim. See, e.g., <i>Reid v. American Metal Co.</i> , 246 U.S. 304, 306, 38 S.Ct. 312, 61 L.Ed. 733 (1938) (order of military officer "in his capacity as a commanding officer" barred from adjudication by act of state doctrine); <i>Orelin v. Central Leather Co.</i> , 246 U.S. 297, 303, 38 S.Ct. 309, 62 L.Ed. 736 (1938) (same; order of a "duly commissioned military commander" when conducting active independent operations"); <i>Underhill v. Hernandez</i> , 188 U.S. 250, 254, 38 S.Ct. 83, 42 L.Ed. 436 (1897) (same). The act of state doctrine is not a rule of decision, but a rule of abstention, meaning that it bars a court from deciding a case, rather than determining the law. The doctrine is based on the principle of comity, which is the recognition of the sovereign authority of other nations. Thus, these cases establish that if a court determines the military officer acted on behalf of a recognized government and if the lawsuit turns on a challenge to the officer's order, then the act of state doctrine bars adjudication of the matter.	Act of state doctrine does not simply relieve the foreign government of liability for its acts, but operates as an issue preclusive device, foreclosing judicial inquiry into the validity or propriety of such acts in litigation between any set of parties.	"Does the act of state doctrine operate as an issue preclusive device, foreclosing judicial inquiry into the validity or propriety of such acts in litigation between any set of parties?"	International Law - Memo # 232 - C - 55.docx	R055-00328487-AC055-003346078	Condensed, SA, Sub	0.75	839	1	15,344	21,876	9,079
1428	<i>Ree v. United Corp.</i> , 70 F. Supp. 2d 1073	221+51	Second, in order given by a military officer has traditionally been viewed as a military act. See, e.g., <i>Reid v. American Metal Co.</i> , 246 U.S. 304, 306, 38 S.Ct. 312, 61 L.Ed. 733 (1938) (order of military officer "in his capacity as a commanding officer" barred from adjudication by act of state doctrine); <i>Orelin v. Central Leather Co.</i> , 246 U.S. 297, 303, 38 S.Ct. 309, 62 L.Ed. 736 (1938) (same; order of a "duly commissioned military commander" when conducting active independent operations"); <i>Underhill v. Hernandez</i> , 188 U.S. 250, 254, 38 S.Ct. 83, 42 L.Ed. 436 (1897) (same). The act of state doctrine is not a rule of decision, but a rule of abstention, meaning that it bars a court from deciding a case, rather than determining the law. The doctrine is based on the principle of comity, which is the recognition of the sovereign authority of other nations. Thus, these cases establish that if a court determines the military officer acted on behalf of a recognized government and if the lawsuit turns on a challenge to the officer's order, then the act of state doctrine bars adjudication of the matter.	If a court determines that military officer acted on behalf of a recognized government, then the act of state doctrine bars adjudication of matter.	"If a court determines that military officer acted on behalf of a recognized government, then the act of state doctrine bars adjudication of matter?"	020321.docx	LEGALBASE-00124415-LEGALBASE-00124416	SA, Sub	0.81	0	0	1	1	1
1429	<i>Northrop Corp. v. Harover Tr. Co.</i> , 125 Misc.2d 771	92+2980	The district court held that the complaint failed to state a claim because the act of state doctrine barred the plaintiff's claim. The plaintiff's inquiry into the validity of the public acts of a recognized foreign sovereign committed to the sovereign's own law, whether or not the acts conformed to the sovereign's own laws, and conversely, since our law ordinarily does not recognize extra-territorial jurisdiction, a sovereign cannot affect the rights of non-citizens outside its borders.	Act of state doctrine and political question doctrine require courts to defer to executive or legislative branches of government when those branches are better equipped to handle politically sensitive issues.	Does the act of state doctrine and political question doctrine require courts to defer to executive or legislative branches of government when those branches are better equipped to handle politically sensitive issues?	International Law - Memo # 436 - C - 58.docx	R055-003284037-AC055-003346038	SA, Sub	0.75	0	0	1	1	1
1430	<i>Beck v. Manufacturers Hanover Tr. Co.</i> , 125 Misc.2d 771	221+42	The Act of State doctrine precludes American courts from inquiring into the validity of the public acts of a recognized foreign sovereign committed to the sovereign's own law, whether or not the acts conformed to the sovereign's own laws, and conversely, since our law ordinarily does not recognize extra-territorial jurisdiction, a sovereign cannot affect the rights of non-citizens outside its borders.	Act of state doctrine precludes American courts from inquiring into the validity of the public acts of a recognized foreign sovereign committed to the sovereign's own law, whether or not the acts conformed to the sovereign's own laws, and conversely, since our law ordinarily does not recognize extra-territorial jurisdiction, a sovereign cannot affect the rights of non-citizens outside its borders. United Nations Charter, Art. 1, ¶ 46, 59 Stat. 1031.	"Does the act of state doctrine preclude American courts from inquiring into the validity of the public acts of a recognized foreign sovereign committed to the sovereign's own law, whether or not the acts conformed to the sovereign's own laws?"	International Law - Memo # 560 - C - 54.docx	R055-003284816-AC055-003388637	Condensed, SA, Sub	0.28	0	1	1	1	1
1431	<i>Forbo-Gilbasco S.A. v. Congoleum Corp.</i> , 516 F. Supp. 1210	221+42	Second, Congoleum's argument that the Act of State doctrine precludes consideration of Gilbasco's claim for damages and a refund of royalties, is unavailing. The Act of State doctrine precludes judicial determination of the legality of acts of foreign states undertaken within their own territories which might embarrass executive department in its conduct of foreign affairs.	"Act of state doctrine" precludes judicial determination of legality of acts of foreign states undertaken within their own territories which might embarrass executive department in its conduct of foreign affairs.	Does the act of state doctrine preclude judicial determination of the legality of acts of foreign states undertaken within their own territories which might embarrass executive department in its conduct of foreign affairs?	020940.docx	LEGALBASE-00124422-LEGALBASE-00124423	SA, Sub	0.88	0	0	1	1	1

ROW	Judicial Opinion	WNIS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences	
1432	Dominican Americana Behco v. Gulf & W. Indus., 473 F. Supp. 680	221-142	However, the Second Circuit has not limited the act of state doctrine to cases challenging the legality of foreign government acts. Rather, it has held that if it is necessary to inquire into the motivation of an act of a foreign government harmful to the plaintiff in order to establish that the decision was instigated by a private defendant, the act of state doctrine will apply. <i>Hunt v. Mobil Oil Corp.</i> , 476 F.2d 76, 77, 41 O.R.D. 1971, 1972. <i>Petroleum Corp. v. Batao Gas & Oil Co.</i> , 331 F.Supp. 92 (C.D.Cal.1971), <i>Aff'd</i> , 461 F.2d 1261 (9th Cir.), <i>cert. denied</i> , 409 U.S. 950, 93 S.Ct. 272, 34 L.Ed.2d 221 (1972).	Act of state doctrine is not limited to cases challenging the legality of foreign government acts; if it is necessary to inquire into the motivation of an act of a foreign government harmful to the plaintiff in order to establish that the decision was instigated by a private defendant, the act of state doctrine will apply.	"If it is necessary to inquire into the motivation of an act of a foreign government harmful to the plaintiff in order to establish that the decision was instigated by a private defendant, will the act of state doctrine apply?"	International Law- Memo #776 - C - SU.docx	ROSS-00335652-ROSS-00335653	SA, Sub	0.47	839	15,344	14,873	21,876	9,029	
1433	Woodam v. Tussing, 54 S.W.3d 442	302-48	The purpose of pleadings is to give the adverse parties notice of each party's claims and defenses, as well as notice of the relief sought. <i>Perney v. Briercrest Serv. Corp.</i> , 805 S.W.2d 216, 218 (Tex.1991); <i>Kisom v. Borden Home Sys.</i> , 587 S.W.2d 975, 677 (Tex.1979); <i>Gonzalez v. City of Harlingen</i> , 814 S.W.2d 109, 111-12 (Tex.App.-Corpus Christi 1991, writ denied). Pleadings provide "fair notice" of the claim involved, when an opposing attorney of reasonable competence could examine the pleadings and ascertain the nature and basic issues of the controversy and the relevant elements of state law. <i>Perney v. Briercrest Serv. Corp.</i> , 805 S.W.2d 216, 218 (Tex.1991); <i>Id.</i> , 54 S.W.3d 442, 447-48 (Tex.App.-Dallas 2001, no writ). Whether a cause of action was pleaded, the plaintiff's pleadings must be adequate for the court to be able, from an examination of the pleadings alone, to ascertain with reasonable certainty and without resorting to information from another source, the elements of the plaintiff's cause of action and the relief sought with sufficient information on which to base a judgment. <i>Stoner v. Thompson</i> , 378 S.W.2d 679, 683 (Tex.1979); <i>Henderson v. Wolf</i> , 694 S.W.2d 159, 163 (Tex.1983). The general rule is that pleadings will be construed favorably as possible to the pleader. <i>Gulf, C. & S.F. Ry. Co. v. Bliss</i> , 368 S.W.2d 594, 599 (Tex.1963); <i>Henderson</i> , 694 S.W.2d at 36. "The court will look to the pleader's intent and the pleading will be upheld even if some element of a cause of action has not been specifically alleged. Every fact will be supplied that can reasonably be inferred from what is specifically stated." <i>Bliss</i> , 368 S.W.2d at 599.	In determining whether a cause of action was pleaded, the plaintiff's pleadings must be adequate for the court to be able, from an examination of the pleadings alone, to ascertain with reasonable certainty and without resorting to information from another source, the elements of the plaintiff's cause of action and the relief sought with sufficient information on which to base a judgment.	Must the court look to the pleadings alone in determining whether a cause of action has been stated?	02384.docx	LEGALISE-00125395-LEGALISE-00125397	Condensed, SA	0.77	0	1	0	1		
1434	Fort Worth Hotel Ltd. P'hip v. Enserch Corp., 977 S.W.2d 746	307A-3	We begin by addressing Lone Star Gas's disregard for the motion in limine. A motion in limine is a procedural device that permits a party to identify, before trial, certain evidentiary rulings that the court may be asked to make. <i>See Hartford Accident & Indem. Co. v. McCordell</i> , 369 S.W.2d 331, 332 (Tex.1963). The purpose of a motion in limine is to prevent the other party from asking prejudicial questions and introducing prejudicial evidence in front of the jury without first asking the court's permission. <i>Id.</i> The trial court's ruling on a motion in limine is not a ruling that excludes or admits evidence; it is merely a tentative ruling that evidence in front of the jury without first approaching the bench for a ruling. <i>See Chavis v. Director</i> , 924 S.W.2d 439, 446 (Tex.App.-Beaumont 1996, no writ). When a trial court's order on a motion in limine is violated, we review the violation to see if it is curable by instructions to the jury to disregard it. <i>See Dore v. Director, State Employees Workers' Compensation Div.</i> , 857 S.W.2d 577, 580 (Tex.App.-Houston [1st Dist.] 1993, writ denied).	Motion in limine is a procedural device that permits a party to identify, before trial, certain evidentiary rulings that the court may be asked to make; its purpose is to prevent the other party from asking prejudicial questions and introducing prejudicial evidence in front of the jury without first asking the court's permission.	Is the purpose of a motion in limine to prevent the other party from introducing prejudicial evidence in front of the jury without first asking the court's permission?	024353.docx	LEGALISE-00125326-LEGALISE-00125327	Condensed, SA	0.72	0	1	0	1		
1435	Kelly v. New W. Fed. Sav., 49 Cal. App. 4th 659	307A-3	It is a misuse of a motion in limine to attempt to compel a witness or a party to conform his or her trial testimony to a preconceived factual scenario based on testimony given during pretrial discovery. One purpose of a motion in limine is to prevent the other party from asking prejudicial questions and introducing evidence that is irrelevant, immaterial, and unduly prejudicial, which can be useful for impeachment at the time of trial. <i>Amtech</i> clearly succeeded in this regard. Other than issue preclusion based on responses to requests for admissions, sanctions for abuse of the discovery process, or a clear case of waiver or estoppel, a court abuses its discretion when it precludes a party from trying a case on a theory consistent with existing evidence, even though the pretrial testimony of the party relating to how the accident occurred is contrary to the theory. There is no suggestion in the record before us that plaintiffs abused any portion of the discovery process, nor are there any facts to support a theory of waiver or estoppel.	It is a misuse of a motion in limine to attempt to compel a witness or party to conform their trial testimony to a preconceived factual scenario based on testimony given during pretrial discovery.	Is it a misuse of a motion in limine to attempt to compel a witness or party to conform their trial testimony to a preconceived factual scenario based on testimony given during pretrial discovery?	031943.docx	LEGALISE-00124253-LEGALISE-00124254	SA, Sub	0.8	0	0	1	1		
1436	Vela v. Wagner & Brown, Ltd., 203 S.W.3d 37	307A-3	A motion in limine is a procedural device that permits a party to identify, pre-trial, certain evidentiary issues the court may be asked to rule upon. <i>Vukan Materials</i> , 2004 WL 2597852 at *2. "The purpose of such a motion is to prevent opposing parties from asking prejudicial questions and introducing evidence that is irrelevant, immaterial, and unduly prejudicial, which can be useful for impeachment at the time of trial. <i>Amtech</i> clearly succeeded in this regard. Other than issue preclusion based on responses to requests for admissions, sanctions for abuse of the discovery process, or a clear case of waiver or estoppel, a court abuses its discretion when it precludes a party from trying a case on a theory consistent with existing evidence, even though the pretrial testimony of the party relating to how the accident occurred is contrary to the theory. There is no suggestion in the record before us that plaintiffs abused any portion of the discovery process, nor are there any facts to support a theory of waiver or estoppel.	The purpose of a motion in limine is to prevent opposing parties from asking prejudicial questions and introducing prejudicial evidence in front of the jury without first seeking leave of court.	Does a motion in limine prevent opposing parties from asking prejudicial questions and introducing prejudicial evidence to the jury without first seeking leave of court?	Pretrial Procedure - Memo #930 - C - T1.docx	ROSS-00387493-ROSS-00387494	Condensed, Order, SA, Sub	0.78	1	1	1	1		

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1437	Premium Guaranty Int'l, Ltd. v. American Republics Guaranty Corp., 200 F.3d 967, 980 (4th Cir. 2000), 200 F.3d 957 (11th Cir. 2000).	367A+3	A motion in limine filed in a civil case "is generally used as a substitute for pretrial discovery and is not meant to exclude evidence from trial for violations of the disclosure rules." Ariz. 231, 235-12, 62 P.3d 976, 980 (Apr. 2003). A trial court's given considerable discretion in resolving those issues. State v. Duann, 176 Ariz. 463, 465, 862 P.2d 223, 225 (Apr. 1993), and so we do not review its decisions until they are made. See McMurren v. JMC Builders, Inc., 204 Ariz. 345, 351, 20 n. 7, 68 P.3d 1082, 1088 (Apr. 2003) (holding against advisory opinion). Because the trial court has not ruled on the admissibility of this evidence, we remand, allowing it to exercise its discretion without taking a conflict on issue such as ruling.	A "motion in limine" filed in a civil case is generally used as a substitute for pretrial discovery and is not meant to exclude evidence from trial for violations of the disclosure rules.	Is a motion in limine filed in a civil case generally used as a substitute for pretrial discovery and is not meant to exclude evidence from trial for violations of the disclosure rules?	Pretrial Procedure - Memo # 839 - C-11.docx	R055-003325827-R055-003325828	SA, Sub	0.74	0	15,344	14,873	21,876	9,079
1438	State of Ohio ex rel. Star Supply, Div. of Star Indus. v. City of Greenfield, Ohio, 528 F. Supp. 955	3656-7(1)	The question whether the taxpayer's interest in a given property was sufficient for a tax lien to attach must be determined under state law. Aquilino v. United States, 393 U.S. 599, 80 S.Ct. 1277, 4 L.Ed.2d 1165 (1969). Under Ohio law, a surety that is required to pay amounts owing to subcontractors, laborers or materialmen is thereby subrogated to the obligation it has discharged. Western Cnty. & Surety Co. v. Brooks, 382 F.2d 486 (4th Cir. 1962) (Ohio Law); Miami Conservancy District v. New Amsterdams Casualty Co., 118 F.2d 604 (6th Cir.), cert. denied, 314 U.S. 640, 62 S.Ct. 80, 86 L.Ed. 513 (1941). The City of Greenfield had both the right and the equitable obligation implied from Ohio Statutory Provisions that required the City to obtain a payment bond, see O.R.C. s 153.54 (1979) (amended Aug. 3, 1980) to assure that subcontractors, laborers and materialmen were paid at least for the work they performed. See O.R.C. s 153.54 (1979) (amended Aug. 3, 1980) to assure that subcontractors, laborers and materialmen were paid at least for the work they performed. (4th Cir. 1962). The funds retained by the City are as much for the protection of the surety as they are for that of the City, and they belong equally to the surety as to the contractor. See id. at 490; United States Fidelity & Guaranty Co. v. Allied Products Co., 45 Ohio App. 270, 187 N.E. 83 (1933); cf. State, ex rel. Southern Surety Co. v. Schlesinger, 114 Ohio 51, 2d 32.3, 151 N.E. 171 (1926) (surety completed contract); cf. (1926); Village of Beechwood v. Ohio Casualty Insurance Co., 47 Ohio App. 232, 129 N.E. 791 (1919) (effect on tax lien).	Under Ohio law, a surety that is required to pay amounts owing to subcontractors, laborers or materialmen is thereby subrogated to the rights of those it has paid as well as to the rights of those whose obligation it has discharged.	Is a surety that is required to pay amounts owing to the subcontractor, laborers or materialmen thereby subrogated to the rights of those it has paid as well as to the rights of those whose obligation it has discharged?	Subrogation - Memo # 823 - RK.docx	R055-003290420-R055-003390422	SA, Sub	0.86	0	0	1	1	
1439	United States v. Ginn, 510 F.3d 134	63+1(1)	The Fourth Circuit also shares our view that, in order to establish the quid pro quo essential to proving bribery, "the government need not show that the defendant intended for his payments to be tied to specific official acts." United States v. Jennings, 607 F.3d 1006, 1011 (4th Cir. 2010) (quoting United States v. Ginn, 1988, in which the court found that the defendant's payments to a city official responsible for awarding jobs renovating vacant housing units, id. at 1011 for the money, the official steered contracts to Jennings worth hundreds of thousands of dollars. Id. In upholding the bribery conviction, the Fourth Circuit emphasized that bribery required an intent to effect an exchange, but that "each payment need not be correlated with a specific official act.... In other words, the government need not show that the defendant intended to effect a quid pro quo, not just this for that." Id. at 1014 (internal citation omitted). Thus, bribery can be accomplished through an ongoing course of conduct, so long as evidence shows that the "favor and gifts flowing to a public official [are] in exchange for a pattern of official actions favorable to the donor." Id. (emphasis in original) (internal quotation omitted).	Bribery can be accomplished through an ongoing course of conduct, so long as evidence shows that the favors and gifts flowing to a public official are in exchange for a pattern of official actions favorable to the donor.	Can bribery of a public official be accomplished through an ongoing course of conduct, so long as the evidence shows that the favors and gifts flowing to a public official are in exchange for a pattern of official actions favorable to the donor?	Bribery - Memo # 82 - C-50.docx	R055-003327118-R055-003327120	SA, Sub	0.83	0	0	1	1	
1440	Peter v. Gull, 295 Ga. App. 782	50+4422	The Parties also assert that a grant of official immunity to Dr. Gull based upon Jaber's status as a Medicaid patient would violate their constitutional rights to due process and equal protection. The Supreme Court of Georgia, however, has previously rejected the argument that the Georgia Tort Claims Act violates the constitution, even where it does not afford equal treatment to all plaintiffs. As the Court explained: The bar of sovereign immunity neither results in a deprivation of property without due process under the federal or state constitutions. U.S.C.A. Ann. tit. 28, § 2680 (1992). The due process and equal protection clauses of the federal and state constitutions protect only rights, not mere privileges, and discrimination in the grant of privileges is not a denial of equal protection to those who are not favored. A waiver of sovereign immunity is a mere privilege, not a right, and the extension of that privilege is solely a matter of legislative grace. (Citations and punctuation omitted.) Huddle v. Ashe, Accordingly, the Georgia Tort Claims Act does not violate the Georgia Constitution. See also Shelley v. Bd. of Public Ed., etc. ("[I]f the immunity rule now has constitutional status, and solutions to the iniquitous problems that it has posed and continues to pose must now be effected by the General Assembly").	Trial court determination that pediatric pulmonologist was entitled to official immunity based on patient's status as a Medicaid patient did not violate parents' constitutional rights to due process and equal protection. In medical malpractice and wrongful death action against pulmonologist, the bar of sovereign immunity did not result in a deprivation of property without just compensation or constitute a denial of equal protection or due process under the federal or state constitutions. U.S.C.A. Ann. tit. 28, § 2680 (1992).	Does the bar of sovereign immunity result in a deprivation of property without just compensation or constitute a denial of equal protection or due process under the federal or state constitutions?	03.7550.docx	LEGALCASE-00126093-LEGALCASE-00126094		0.62	0	1	1	1	
1441	Wimmerlage Through Wimmerlage v. Maine Two, High Sch. Dist. 207, 824 F. Supp. 136	1.41E+31	Federal judicial intervention in the day to day operations of public school is highly undesirable and requires significant restraint. Federal courts must not "intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values." Esperson v. Arkansas, 393 U.S. 97, 104, 89 S.Ct. 266, 270, 21 L.Ed.2d 228 (1968). The court will consider the complaint with these principles in mind.	Federal judicial intervention in day to day operations of public school is highly undesirable and requires significant restraint. Federal courts must not intervene in resolution of conflicts which arise in daily operation of school systems and which do not directly and sharply implicate basic constitutional values.	"Is the educational context, are federal courts the appropriate forum for resolving daily conflicts arising from the operations of school systems?"	01.0766.docx	LEGALCASE-00127072-LEGALCASE-00127073	SA, Sub	0.34	0	0	1	1	

ROW	Judicial Opinion	WIMS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
1442	Driscoll v. Gen. Nutrition Corp., 34F. Supp. 2d 789	43+1	The purpose of Connecticut's Workers' Compensation Act, Conn. Gen.Stat. "§ 31-272 through § 31-355a ("WCA" or "the Act"), "is to compensate the worker for injuries arising out of and in the course of employment, without regard to fault, by imposing a form of strict liability on the employer." Mingosov v. CBS, Inc., 136 Conn. 91, 97, 431 A.2d 968 (1981). The purpose of the WCA is to provide a prompt and certain remedy to an employee must rely on this statutory remedy and may not pursue common law tort claims against his employer. See Jett v. Dornier, 179 Conn. 215, 217, 425 A.2d 1263 (1979); Meyers v. Arcudi, 915 F.Supp. 522, 524 (D.Conn.1996). Thus, the WCA "compromise[s] an employee's right to a common law tort action for work related injuries in return for relatively quick and certain compensation." Mingosov, 136 Conn. 497, 491, A.2d 963 (citations omitted).	Connecticut Workers' Compensation Act (WCA) compromises an employee's right to a common law tort action for work related injuries in return for relatively quick and certain compensation. C.G.S.A. §§ 31-275 to 31-355a.	Does the Worker's Compensation Act (WCA) compromise an employee's right to a common law tort action for work related injuries in return for relatively quick and certain compensation?	048236.docx	LEGALCASE-00126911-LEGALCASE-00126912	SA, Sub	0.75	839	15,344	14,873	21,876	9,029
1443	Virginia Sunshine All v. Nuclear Regulatory Comm'n, 509 F. Supp. 863	13+65	Section 147 of the Atomic Energy Act, which was enacted on June 30, 1950, is the applicable (b)(3) statute in this case. Although this section was enacted after the plaintiff's original FOIA requests, it is well established "that a court is to apply the law in effect at the time it renders its decision unless doing so would result in manifest injustice or there is a statutory direction or legislative history to the contrary." Bradley v. School Board of Richmond, 436 U.S. 696, 711, 94 S.Ct. 2686, 2686, 40 L.Ed.2d 1021 (1978). The Atomic Energy Act of 1954, Pub. Law No. 83-703, 70 Stat. 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 2680, 2681, 2682, 2683, 2684, 2685, 2686, 2687, 2688, 2689, 2690, 2691, 2692, 2693, 2694, 2695, 2696, 2697, 2698, 2699, 2700, 2701, 2702, 2703, 2704, 2705, 2706, 2707, 2708, 2709, 2710, 2711, 2712, 2713, 2714, 2715, 2716, 2717, 2718, 2719, 2720, 2721, 2722, 2723, 2724, 2725, 2726, 2727, 2728, 2729, 2730, 2731, 2732, 2733, 2734, 2735, 2736, 2737, 2738, 2739, 2740, 2741, 2742, 2743, 2744, 2745, 2746, 2747, 2748, 2749, 2750, 2751, 2752, 2753, 2754, 2755, 2756, 2757, 2758, 2759, 2760, 2761, 2762, 2763, 2764, 2765, 2766, 2767, 2768, 2769, 2770, 2771, 2772, 2773, 2774, 2775, 2776, 2777, 2778, 2779, 2780, 2781, 2782, 2783, 2784, 2785, 2786, 2787, 2788, 2789, 2790, 2791, 2792, 2793, 2794, 2795, 2796, 2797, 2798, 2799, 2800, 2801, 2802, 2803, 2804, 2805, 2806, 2807, 2808, 2809, 2810, 2811, 2812, 2813, 2814, 2815, 2816, 2817, 2818, 2819, 2820, 2821, 2822, 2823, 2824, 2825, 2826, 2827, 2828, 2829, 2830, 2831, 2832, 2833, 2834, 2835, 2836, 2837, 2838, 2839, 2840, 2841, 2842, 284											

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1453	Referents v. City View Community, 417 S.W.3d 882	307A-501	Epps does not expressly state the applicable standard of review. The court held that the issue was one of legal sufficiency; they assert that the relevant standard is whether the trial court's finding that the plaintiff's motion to dismiss was not supported by sufficient evidence. We agree that whether a party conspired to a void an unfavorable ruling is a question of fact, and that the trial court's finding on that issue may be challenged on the ground that it is not supported by sufficient evidence. See HTS Servs. Inc. v. Hallwood Realty Partners, L.P., 190 S.W.3d 108, 111 (Tex.App. Houston [1st Dist.] 2005, no pet.) (when trial court's findings are challenged, appellate courts review sufficiency of evidence, not legal sufficiency, and the standard of review is not used in reviewing legal or factual sufficiency of evidence supporting jury findings).	Whether a party conspired to avoid an unfavorable ruling is a question of fact and that the trial court's finding on that issue may be challenged on the ground that it is not supported by sufficient evidence.	Is the question whether a party conspired to avoid an unfavorable ruling a question of fact and can the trial court's finding on that issue be challenged on the ground that it is not supported by sufficient evidence?	02437.docx	LEGALISE-00129528-LEGALISE-00129529	Condensed, SA	0.76	839	15,344	14,873	21,876	9,079	
										0	0	1	1		
1454	In re Nanyo, 344 Ill. App. 3d 540	307A-501	A plaintiff is generally entitled to voluntarily dismiss his or her case at any time before trial or hearing begins. <i>Winn v. Mitsubishi Motor Manufacturing of America, Inc.</i> , 308 Ill. App. 3d 1034, 1050, 242 Ill. Dec. 540, 542 Ill. Dec. 540, 721 N.E.2d at 822. When a plaintiff moves for a voluntary dismissal, the court has discretion to grant or deny the motion. To take a voluntary dismissal absent an unequivocal conflict between specific rule of the supreme court and section 2-1009 of the Illinois Code of Civil Procedure.[] 735 ILCS 5/2-1009 (West 2009); <i>Winn</i> , 308 Ill.App.3d at 1058, 242 Ill. Dec. 540, 721 N.E.2d at 822. When a plaintiff moves for a voluntary dismissal, trial judges have discretion to hear a previously filed motion that, if ruled upon favorably by the court, could result in a final disposition of the case. <i>Winn</i> , 308 Ill.App.3d at 1058, 242 Ill. Dec. 540, 721 N.E.2d at 822. As such, in a circumstance, the trial judge's ruling is not dispositive. <i>Winn</i> , 308 Ill.App.3d at 1058, 242 Ill. Dec. 540, 721 N.E.2d at 823.	Plaintiffs have an almost absolute right to take a voluntary dismissal absent an unequivocal conflict between a specific rule of the Supreme Court and Code of Civil Procedure. 514 A. 735 ILCS 5/2-1009.	Do plaintiffs have an almost absolute right to take a voluntary dismissal absent an unequivocal conflict between a specific rule of the Supreme Court and Code of Civil Procedure?	Pertrial Procedure - Memo # 1293 - C-19.docx	ROSS-00386092-A055-00386094	SA, Sub	0.8	0	0	1	1		
										0	0	1	1		
1455	In re Shin, 195 Cal. App. 2d 683	1.41E+19	The people of California recognize that maintenance of a democratic form of government depends in part upon an educated citizenry and declared in their Constitution that a general diffusion of knowledge and intelligence was essential to the preservation of the rights and liberties of the people. The people of California have also recognized that a suitable means intellectual, scientific, moral and agricultural improvement. (California Constitution, art. IX, sec. 1.) As a means of achieving a general diffusion of knowledge and intelligence, the Legislature was directed to provide for a public school system of common free schools. (California Constitution, art. IX, secs. 5, 6, 7 and 14.) In accordance with the constitutional mandate to bring about a general diffusion of knowledge and intelligence, the Legislature, over the years, has enacted a series of laws designed to improve the public school system to train school children in good citizenship, patriotism and loyalty to the state and the nation as a means of protecting the public welfare. <i>Gabrelli v. Knickerbocker</i> , 12 Cal.2d 485, 92, 82 P.2d 393. The Supreme Court of the United States, in the case of <i>Pierce v. Society of Sisters</i> , 268 U.S. 510, 45 S.Ct. 571, 573, 69 L.Ed. 1070, held that "No question is raised concerning the power of the state reasonably to regulate all schools, to inspect, supervise and examine them, their teachers and pupils, to require that all children shall attend school, to enforce the regulations of good moral character and patriotic dispositions, but certain studies, subjects essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare."	A primary purpose of the educational system is to train school children in good citizenship, patriotism, and loyalty to state and nation as means of protecting public welfare. <i>West Ann.Const. art. 9:55 1, 5:7, 14.</i>	"Is the training of school children in good citizenship, patriotism, and loyalty to state and nation as means of protecting public welfare a primary purpose of the educational system?"	010729.docx	LEGALISE-00129597-LEGALISE-00129598	SA, Sub	0.87	0	0	1	1		
										0	0	1	1		
1456	Louis R. Shapiro v. American Cyanamid Corp., 20 A.D.2d 857	307A-501	Order, entered on November 15, 1963, unanimously reversed, on the law, the complaint denied, with \$10 costs. In March, 1962, plaintiff commenced an action by service of a summons with notice. No complaint was served. By motion returnable February 26, 1963 plaintiff sought leave to serve a complaint. The motion was denied with leave to renew on proper papers, including an affidavit of merits. Thereafter, by a notice of motion dated March 20, 1963 and returnable April 3, 1963, plaintiff moved for leave to renew its application to serve a complaint and for summary judgment. The motion was denied. On May 14, 1963, the motion was denied by an order dated May 14, 1963. Subsequently by notice of motion dated May 31, 1963, returnable June 10, 1963, defendant sought an order granting him leave to discontinue the action without prejudice. Following the denial of such motion and on or about September 13, 1963, plaintiff served a notice of discontinuance pursuant to CPLR 3217, subdivision (e) (1), and thereafter commenced the present action by service of a summons on September 16, 1965, followed later by service of a complaint. Thereupon defendant moved to dismiss the complaint on the ground that the present action was barred by the order granting that motion and that this appeal is taken. Ordinarily, a plaintiff has a right to discontinue a pending action at any time unless substantial rights have accrued or his adversary's rights would be prejudiced thereby. Even then the right may be exercised but subject to terms imposed by the court. The right is not, however, of primary importance on this motion because here no action that could constitute a bar was pending when plaintiff started the present action. "To constitute a bar, the order granting that motion must be a final order and must be obtained based upon the same facts as is the action against which	Ordinarily, plaintiff has right to discontinue pending action at any time unless substantial rights have accrued or his adversary's rights would be prejudiced thereby, and even then right may be exercised subject to terms imposed by courts. CPLR Rule 3.217(b), par. 1.	Does a plaintiff have the right to discontinue a pending action at any time unless substantial rights have accrued or his adversary's rights would be prejudiced thereby?	023556.docx	LEGALISE-00129584-LEGALISE-00129585	SA, Sub	0.9	0	0	1	1		
										0	0	1	1		

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1462	Gohner v. Zimels, 411 N.W.2d 75	307A+747.1	We have stated that, with regard to sanctions for discovery abuses under Rule 37, N.D.C.R.P., dismissal of a claim should be imposed only if there is a deliberate or bad faith noncompliance with an order which constitutes a flagrant abuse of, or disregard for, the rules and should not be used if an alternative, less drastic sanction is available and just as effective. Production Credit Ass'n of Fargo v. Foss, 391 N.W.2d 622 (N.D.1986); Dakota Bank & Trust Co. of Fargo v. Brakke, 377 N.W.2d 553 (N.D.1985); Thompson v. Ziebarth, 334 N.W.2d 192 (N.D.1983). While we believe the same rationale is applicable for violations of pretrial orders, the imposition of an appropriate sanction is nevertheless within the discretion of the trial court. Brakke, supra. A trial court abuses its discretion when it acts in an arbitrary, unreasonable, or unconscionable manner. Brakke, supra.	Imposition of appropriate sanction for violation of pretrial order is within broad discretion of trial court, and court abuses its discretion only when it acts in arbitrary, unreasonable, or unconscionable manner. Rules Civ.Proc., Rule 37.	% the imposition of an appropriate sanction for violation of a pretrial order within the broad discretion of a trial court, and does a court abuse its discretion only when it acts in arbitrary, unreasonable, or unconscionable manner?"	020970.docx	LEGALASE-00130907-LEGALASE-00130908	Order, SA, Sub	0.73	1	0	1	21,876	9,029
1463	Cochran v. Mullins, 276 Ga. App. 81	307A+750	Cochran first complains that the trial court erred in holding him to the terms of the pretrial order with regard to his prayer for damages because nominal damages could have been awarded by the jury. The pretrial order, however, did not require Cochran to pay nominal damages in such amount as to be prejudicial to trial. (b) punitive damages; (c) attorneys fees and expenses of litigation; (d) permanent injunction." It generally is recognized that, unless the pretrial order is modified at or before trial, a party may not advance theories or offer evidence that violate the terms of the pretrial order. Once entered, the pretrial order controls the subsequent course of the action unless modified at the trial to prevent manifest injustice. As we have previously stated, once the issues have been definitively stated in the pre-trial order, the pleadings are no longer relevant to the trial. The court in this case, however, with the issue having been thus defined, they ought to be adhered to in the absence of some good and sufficient reason, which must rest largely within the discretion of the trial judge's exercise of discretion under Rule 16.	It generally is recognized that, unless the pretrial order is modified at or before trial, a party may not advance theories or offer evidence that violate the terms of the pretrial order unless pre-trial order is modified at or before trial? to prevent manifest injustice.	Will a party advance theories or offer evidence that violate terms of pretrial order unless pre-trial order is modified at or before trial?	Pretrial Procedure-003286443-C-360.docx	ROSS-003286443-ROSS-003286444	SA, Sub	0.72	0	0	1	1	
1464	Morand v. Eduna, 415 F.2d 1170	170A+198.1	It is provided within Rule 16, F.R.C.P. that the pretrial order sets the limits of the trial. The pretrial order defines the issues, sets aside the 'implication of issues' and for the 'necessity or desirability of amendments to the pleadings'. Thereafter the court may, as it did here, make an order 'which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice.' As we have previously stated, once the issues have been definitively stated in the pre-trial order, the pleadings are no longer relevant to the trial. The court in this case, however, with the issue having been thus defined, they ought to be adhered to in the absence of some good and sufficient reason, which must rest largely within the discretion of the trial court. Case v. Abrams, 352 F.2d 193, 195-196 (10th Cir. 1965). We have reviewed the record and find no instance of manifest injustice sufficient to require reversal of the trial judge's exercise of discretion under Rule 16.	Once the issues have been definitively stated in the pretrial order, the pleadings are superseded, the issues are set and discovery proceeds accordingly; with the issues having been thus defined, they ought to be adhered to in the absence of some good and sufficient reason, which must rest largely within the discretion of the trial court. Fed.Rules Civ.Proc. rule 16, 28 U.S.C.A.	"Are the issues to be adhered to in the absence of some good and sufficient reason, once they are defined in a final pretrial order?"	Pretrial Procedure - Memo # 2176 - C-AP.docx	ROSS-003286509-ROSS-003286510	SA, Sub	0.66	0	0	1	1	
1465	Bill DeLuca Enterprises v. Comm'r of Revenue, 431 Mass.314	371A+200.1	"[I]s the essence of any system of taxation that it should produce revenue ascertainable, and payable to the government, at regular intervals. Only by such a system is it practicable to produce a regular flow of income and apply methods of accounting, assessment, and collection capable of practical operation." Burnett v. Sanford & Brooks Co., 282 U.S. 359, 365, 51 S.Ct. 150, 75 L.Ed. 383 (1931). See Hillsboro Nat'l Bank v. Commissioner of Internal Revenue, 480 U.S. 370, 377, 103 S.Ct. 1324, 75 L.Ed.2d 1350 (1985). Citing Burnett and Hillsboro, the Supreme Court in 19th century cases had held that the essence of a system of taxation is to produce revenue ascertainable and payable at regular intervals." White, An Essay on the Conceptual Foundations of the Tax Benefit Rule, 82 Mich. L.Rev. 486, 490-91 (1988).) and authorities cited. In Burnett v. Sanford & Brooks Co., supra, a taxpayer reported net losses on a particular business contract for the 1913-1915 tax years. Id. at 361, 51 S.Ct. 150 in 1920, the taxpayer recovered significant income on the contract after obtaining a judgment against the United States for the losses sustained in the contract. The contract produced a net operating loss, the United States Supreme Court allowed the Commissioner to tax the 1920 recovery as if the losses in previous years had not occurred. Id. at 367, 51 S.Ct. 150. In 1920, taxpayers could not carry forward net operating losses (NOL) as they can today. Id. Cf. 26 U.S.C. § 172 (1988). The Court reasoned that the Legislature had to choose some regular method of assessing taxes, and, if transactional inequities flowed from the annual assessment of income taxes, relief could be afforded only by legislation, not by the courts." Burnett v. Sanford & Brooks Co., supra at 367, 51 S.Ct. 150.	Essence of any system of taxation is that it should produce revenue ascertainable, and payable to the government, at regular intervals, since only by such a system is it practicable to produce a regular flow of income and apply methods of accounting, assessment, and collection capable of practical operation.	"Is the system of taxation practicable to produce a regular flow of income and apply methods of accounting, assessment, and collection capable of practical operation?"	Taxation - Memo # 107 - C-31.docx	ROSS-003301161-ROSS-003301162	SA, Sub	0.83	0	0	1	1	

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1466	Binger v. King Pest Control, 401 So. 2d 1310	307A+747.1	The goals underlying discovery practice are readily apparent in Florida Rules of Civil Procedure 1.203(c), which provide that a trial court's pretrial order detailing the agreements made by the parties' "shall control the subsequent course of the action unless modified at the trial to prevent injustice. Consistent with this rule, we now hold that a pretrial order directing the parties to exchange the names of witnesses requires a listing or notification of all witnesses that the parties reasonably foresee will be called to testify, whether for substantive, corroborative, impeachment or rebuttal purposes. Obviously, a general reference to "any and all necessary" impeachment or rebuttal witnesses, as was the case here, constitutes inadequate disclosure. We expressly disapprove decisions in the first three categories of witness disclosure cases which hold or imply that certain types of witnesses are automatically exempt from the dictates of a pretrial disclosure order.	Pretrial order directing parties to exchange names of witnesses requires listing or notification of all witnesses that parties reasonably foresee will be called to testify, whether for substantive, corroborative, impeachment or rebuttal purposes.	Does a pretrial order directing parties to exchange names of witnesses require listing or notification of all witnesses that parties reasonably foresee will be called to testify?	Pretrial Procedure - Memo # 1490 - C - ES.docx	R055-00229675-R055-00329676	Condensed, SA	0.75	0	1	14,873	21,876	9,029
	Texas Elec. Co-op. v. Dillard, 171 S.W.3d 201	307A+331	Before any failure to produce material evidence may be viewed as discovery abuse, the opposing party must establish that the nonproducing party had a duty to preserve the evidence in question. Id. at 722. There must be a sufficient foundational showing that the party who destroyed the evidence had notice both of the potential claim and of the evidence's potential relevance thereto. Id. An objective test for anticipation of litigation is whether a reasonable person would conclude from the severity of the accident and other circumstances surrounding it that there was a substantial chance for litigation. Id.	Objective test for anticipation of litigation, as would create duty to preserve evidence, is whether reasonable person would conclude from severity of accident, and other circumstances surrounding it, that there was substantial chance for litigation.	% the objective test for anticipation of litigation, as would create duty to preserve evidence, whether reasonable person would conclude from severity of accident, and other circumstances surrounding it that there was substantial chance for litigation?*	Pretrial Procedure - Memo # 1979 - C - SH.docx	R055-00287327-R055-00328728	SA, Sub	0.59	0	0	1	1	
1468	Sidwell Oil & Gas Co. v. Loyd, 230 Kan. 77	307A+749.1	When Judge Aldrich disqualified himself, Judge Flood took over and tried the case. At the conclusion of the evidence defendant objected to any discussion of the theory of no meeting of the minds. Judge Flood pointed out that the evidence on this theory was introduced and it was tried on that theory. Therefore, the objection was overruled and it properly so. "Where the record shows the parties have submitted their entire case for decision on all issues, without objection, they are held to have consented that the court decide such issues even though outside the scope of the pretrial order." Adair v. Bernhardt, Inc., 226 Kan. 241, 173 P.3d 772, 782 (2007) (quoting).	If parties have submitted their entire case for decision on all issues, without objection, they have consented to having court decide such issues even though outside the scope of the pretrial order.	"If parties have submitted their entire case for decision on all issues, without objection, have they consented to having a court decide such issues even though outside the scope of the pretrial order?*	Pretrial Procedure - Memo # 1590 - C - SH.docx	R055-00287844-R055-003287845	SA, Sub	0.7	0	0	1	1	
	Structural Pres. Sys. v. Petty, 927 A.2d 1069	307A+750	We consider first Structural's procedural claim that the trial court erred in rejecting its argument that Petty should be required to apportion his pre-existing injuries because it was not raised in its pre-trial statement and included in the pre-trial order. The pre-trial order limits the issues for trial and controls the subsequent course of the action, thereby precluding the intersection of new issues, absent modification of the order upon good cause. (citations omitted; see also Super. Ct. Civ. R. 16(d) (setting forth the general subject of the pre-trial order and stating that it controls further proceedings unless subsequently modified). However, we cannot say on this record that Structural did not raise the apportionment issue pre-trial. Although not expressly characterized as such, Structural cited cases upon which it relied that address the issue, specifically, Williams v. Patterson, 681 A.2d 1147, 150 P.3d 1 (D.C. 1996) (holding the lack of expert testimony precluded a medical malpractice claim); and, in addition, a complicated medical question due to pre-existing medical condition), and Baltimore, supra, 545 A.2d at 1140 (disputing that Petty's alleged damages were proximately caused by its alleged negligence. The causation issue bears a reasonable relationship to the apportionment argument. The question of whether Petty's pre-existing hip injury caused his back pain, rather than the trip-and-fall, falls squarely within the causation analysis. Thus, Structural's claim that Petty should be required to prove that his injuries were caused by his accident, rather than some prior condition, can be inferred reasonably from the parties' joint pre-trial statement, which was incorporated into the pre-trial order. Therefore, the trial court erred in holding that Structural's apportionment argument was barred procedurally by the pre-trial order.	The pre-trial order limits the issues for trial and controls the subsequent course of the action, thereby precluding the intersection of new issues, absent modification of the order upon good cause.	"Does the pre-trial order limit the issues for trial and controls the subsequent course of the action and does that result in precluding the intersection of new issues, absent modification of the order upon good cause?*	Pretrial Procedure - Memo # 1593 - C - UG.docx	R055-00031344-R055-00331345	Condensed, SA	0.9	0	1	0	1	
1469	Gouly v. Dayton Newspapers, 34 Ohio App. 2d 207	275+42	The refusal of the trial court to grant a mistrial or a continuance for the purpose of securing documentary evidence and the refusal of the trial court to grant a new trial for "surprise which ordinary prudence could not have guarded against" are matters which rest largely within the discretion of the trial court. We see no such abuse of discretion on the part of the trial court.	It is within discretion of trial court to grant a mistrial or a continuance for purpose of securing documentary evidence, or to grant a new trial or a continuance for the purpose of securing documentary evidence, or to grant a new trial or a continuance for the purpose of securing documentary evidence, or to grant a new trial or a continuance for the purpose of securing documentary evidence.	% it within the discretion of a trial court to grant a mistrial or a continuance for purpose of securing documentary evidence, or to grant a new trial or a continuance for the purpose of securing documentary evidence, or to grant a new trial or a continuance for the purpose of securing documentary evidence, or to grant a new trial or a continuance for the purpose of securing documentary evidence?*	Pretrial Procedure - Memo # 2134 - C - NC.docx	LEGALCASE-00021699-LEGALCASE-00021700	SA, Sub	0.45	0	0	1	1	
	Montgomery v. McDaniel, 271 Va. 465	307A+517.1	Adopting Montgomery's argument would render many nolls an improper use of process under the abuse of process analysis because a first noll carries with it the right to refile the litigation in the future provided other requirements are met such as limitations periods. See, Code § 8.01-380(13). The ability to refile the action at some future time is a right afforded a plaintiff by the General Assembly, regardless of any inconvenience or discomfort it might place on the nonsuited defendant. Exercising the statutory right to take a nonsuit knowing that, by its time, the litigation can be relied does not constitute an abuse of process under the abuse of process analysis. West v. C.A.S. 55 8.01-229E(13), 8.01-380(16).	The ability to refile the nonsuited action at some future time is a right afforded a plaintiff by the General Assembly, regardless of any inconvenience or discomfort it might place on the nonsuited defendant. West v. C.A.S. 55 8.01-229E(13), 8.01-380(16).	% the ability to refile the nonsuited action at some future time is a right afforded a plaintiff by the General Assembly, regardless of any inconvenience or discomfort it might place on the nonsuited defendant?*	Pretrial Procedure - QZ 2675.docx	LEGALCASE-00132334-LEGALCASE-00132335	SA, Sub	0.68	0	0	1	1	
1471														

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
1472	Burton v. D.C., 835 A.2d 1076	307A+750	As to the merits, we reject appellant contention that the trial court did not have discretion to stay from the pretrial order. "Whether to allow a party to go beyond the bounds of the pretrial order is a matter left to the court discretion to be exercised in light of Rule 16 language authorizing modification in the proper case "to prevent manifest injustice." Taylor v. Washington Hospital Center, 407 A.2d 585, 592 (D.C.1979) (citations omitted); accord, e.g., Town Center Management Corp. v. Chavez, 373 A.2d 238, 244 (D.C.1977) ("The binding effect of the pretrial order is always subject to relaxation at the discretion of the trial judge" (citations omitted; emphasis added)).	Whether to allow a party to go beyond the bounds of the pretrial order is a matter left to trial court's discretion to be exercised in light of language of rule governing pretrial conferences and authorizing modification in the proper case to prevent manifest injustice. Civil Rule 16.	"Is it a matter confided to the trial court's sound discretion, whether to allow a party to go beyond the bounds of the pretrial order?"	02747.docx	LEGALASE-00131397- LEGALASE-00131398	SA, Sub	0.58	839 0	15,344 0	14,873 1	21,876 1	9,029
	Norris v. Hearst Tr., 500 F.3d 454	338H+105	It is recognized that under Texas law "[s]ubject to certain conditions, a plaintiff who takes a nonsuit is not precluded from filing a subsequent suit seeking the same relief." Aetna Casualty & Surety Co. v. Specta, 849 S.W.2d 805, 806 (Tex.1993), and "a nonsuit may have the effect of violating earlier interlocutory orders." Hyundai Motor Co. v. Alvarado, 892 S.W.2d 853, 854 (Tex.1995). However, "[o]nce a judge announces a decision that adjudicates a claim, that claim is no longer subject to the plaintiff's right to nonsuit," and that applies to a judge's announcement of a nonsuit in a partial summary judgment motion which seeks relief on less than all of the plaintiff's pending claims. Id. at 855.	Under Texas law, subject to certain conditions, plaintiff who takes nonsuit is not precluded from filing a subsequent suit seeking the same relief, and nonsuit may have effect of violating earlier interlocutory orders. Vernon's Ann. Texas Rules Civ.Proc., Rule 162.	"Is a plaintiff who takes nonsuit precluded from filing a subsequent suit seeking the same relief, and nonsuit may have effect of violating earlier interlocutory orders?"	028530.docx	LEGALASE-00132392- LEGALASE-00132393	SA, Sub	0.63	0 0	0 0	1 1	1 1	
1473	Harper v. Han Chang, 267 A.D.2d 1011	307A+506.1	Supreme Court did not abuse its discretion in denying plaintiff's cross motion for an adjournment and dismissing the complaint (see Herbert v. Towers Super Food Stores-Friant Supermarkets, 741 F.2d 979, 987 (9th Cir.1984), cert. denied, 476 U.S. 910, 53 L.Ed.2d 352, 53 A.L.R.4th 1341). The determination whether to adjourn a trial "is addressed to the discretion of the trial court and should not be interfered with absent a clear abuse thereof" (Blunt v. Northern Ononda County Landfill, 145 A.D.2d 913, 536 N.Y.S.2d 295). While "[l]iberality should be exercised in granting postponements or continuances of trials to obtain material evidence and to prevent miscarriages of justice" (Baugh v. H.R.B. Callen, 88 A.D.2d 136, 142, 452 N.Y.S.2d 220), an adjournment is warranted only when the trial court is satisfied that the parties are to exercise due diligence. Herbert v. Towers Super Food Stores-Friant Supermarkets, supra Paulino v. Marchelietto, supra, Le Jeune v. Baker, 182 A.D.2d 969, 582 N.Y.S.2d 564). Here, the cross motion for an adjournment, made on the eve of trial of this medical malpractice action, was predicated upon the unavailability of plaintiff's expert medical witness. The record demonstrates, however, that plaintiff's attorney had known for at least eight months that the medical expert, who had moved to New Mexico, would not come to New York for trial, and plaintiffs failed to exercise due diligence to remedy the unavailability of that expert.	Denial of medical malpractice plaintiff's motion for an adjournment and dismissal of the complaint were not abuses of discretion where the motion, predicated upon the unavailability of plaintiff's expert medical witness, was made on the eve of trial. The plaintiffs' attorney had known for at least eight months that the expert, who had moved to New Mexico, would not return for trial, and plaintiffs failed to exercise due diligence to remedy the unavailability of that expert.	Will the courts allow adjournment due to unavailability of expert witness in medical malpractice action?	027077.docx	LEGALASE-00133386- LEGALASE-00133387	Confirmed, SA, Sub	0.68	0 0	1 1	1 1	1 1	1
	Burby & Son Homebuilders v. Ford, 310 S.C. 529	307A+517.1	Generally, the plaintiff is entitled to a voluntary nonsuit without prejudice as a matter of right unless legal prejudice is shown by the defendant or important issues of public policy are present. Bowen & Co. v. Ford, 310 S.C. 529, 532 (S.C.1988). Here, the plaintiff alleged and relied upon by the trial court was the fact that Ford would have to bring his counterclaim in the county of Burby's residence. We agree that the loss of proper venue in one's county of residence suffices to establish legal prejudice. We find no abuse of discretion in this case. We, therefore, affirm the denial of Burby's motion for a voluntary nonsuit.	Is a plaintiff entitled to a voluntary nonsuit without prejudice as a matter of right unless legal prejudice is shown by defendant or important issues of public policy are present? once legal prejudice is found, granting or denial is within discretion of trial court. Rules Civ.Proc., Rule 4.1(d)(1).	Is a plaintiff entitled to a voluntary nonsuit without prejudice as a matter of right unless legal prejudice is shown by a defendant or important issues of public policy are present?	027603.docx	LEGALASE-00132690- LEGALASE-00132691	SA, Sub	0.62	0 0	0 0	1 1	1	
1475	Slawell Oil & Gas Co. v. Loyd, 230 Kan. 77	307A+749.1	When Judge Aldrich disqualified himself, Judge Flood took over and tried the case. At the conclusion of the evidence defendant objected to any discussion of the theory of no meeting of the minds. Judge Flood pointed out that the evidence on this theory was introduced and it was tried on so. "Where the record shows the parties have submitted their entire case for decision on all issues, without objection, they are held to have waived their right to a new trial on the merits." 230 Kan. 77, 81. The scope of the pretrial order." Adels v. Bernhardt, Inc., 295 Kan. 241, Syl. P 3, 592 P.2d 350 (1979).	If parties have submitted their entire case for decision on all issues, without objection, they have consented to having court decide such issues even though outside the scope of the pretrial order.	"If parties submit their entire case for decision on all issues, without objection, do they consent to having the court decide such issues even though outside the scope of a pretrial order?"	027715.docx	LEGALASE-00132779- LEGALASE-00132780	SA, Sub	0.7	0 0	0 0	1 1	1	
	Marrino v. King, 355 S.W.3d 629	307A+486	Although trial courts have broad discretion to permit or deny the withdrawal of deemed admissions, they cannot do so arbitrarily, unreasonably, or without reference to guiding rules or principles. Downer v. Aquamarine Operators, Inc., 701 S.W.2d 238, 241-42 (Tex.1985). The due process concern recognized in Wheeler is one such principle that guides the exercise of this discretion. See, e.g., Wheeler, 701 S.W.2d 238, 241-42; 229 S.W.3d 757, 763 (Tex.App. San Antonio 2007) (quoting Wheeler and observing that this due process concern is a "guiding rule and principle that applies "[w]hen requests for admissions are [not] used as intended," and "when a party uses deemed admissions to try to preclude presentation of the merits of a case"). Constitutional imperatives favor the determination of cases on their merits rather than on harmless procedural defaults. Using deemed admissions as the basis for summary judgment therefore does not avoid the requirement of flagrant bad faith or callous disregard, the showing necessary to support a merits-preclusive sanction; it merely incorporates the requirement as an element of the movant's summary judgment burden. See Wheeler, 157 S.W.3d at 443-44.	Although trial courts have broad discretion to permit or deny the withdrawal of deemed admissions, they cannot do so arbitrarily, unreasonably, or without reference to guiding rules or principles. Vernon's Ann. Texas Rules Civ.Proc., Rule 198.3.	"Although trial courts have broad discretion to permit or deny the withdrawal of deemed admissions, can they do so arbitrarily, unreasonably, or without reference to guiding rules or principles?"	028380.docx	LEGALASE-00132844- LEGALASE-00132845	SA, Sub	0.79	0 0	0 0	1 1	1	
1477														

ROW	Judicial Opinion	WJMS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
1478	Shubis v. Estabrook, 385 N.J. Super 91	307A-517.1	A motion based on R. 4:37-1(b) involves three sequential inquiries: (a) whether the matter should be dismissed without prejudice, (b) if so, whether terms should be imposed, and (c) if so, what terms should be imposed. If the court grants a party's motion for summary judgment or dismissal without prejudice, it must also consider the propriety of imposing conditions on the grant of relief. As we have said, the resolution of these questions rests within the sound discretion of the trial judge. Mack Auto, supra, 244 N.J. Super. at 568; SJLA dkt 372.	A motion based on rule regarding voluntary dismissal of a complaint involves three sequential inquiries: (1) whether the matter should be dismissed without prejudice; (2) if so, whether terms should be imposed; and (3) if so, what those terms should be. The court has broad discretion to impose such terms as are appropriate in the circumstances, ensuring delay and duplication of effort. R. 4:37-1(b).	Does a motion based on rule requiring court review prior to a grant of dismissal involve three sequential inquiries?	Preltrial Procedure - Memo # 2839 - C - RF.docx	R0SS-003287638-R0SS-003287639	SA_Sub	0.21	839 0	15_344 0	14_873 1	21_876 1	9,029
1479	Univ. of Texas Med. Branch at Galveston v. Estate of Galveston et al., Shultz, 855 S.W.2d 98	307A-517.1	Under the Texas Rules of Civil Procedure, "[a]t any time before the plaintiff has introduced all of his evidence other than recital evidence, he may move for summary judgment." Tex. R. Civ. P. 162. Rule 162 applies in this case because the defendant moved for summary judgment after introducing its recital evidence. Shultz filed the nonsuit while this matter was pending on interlocutory appeal from UTMB's pretrial plea to the jurisdiction. Under these circumstances, the nonsuit extinguishes a case or controversy from "the moment the motion is filed" or an oral motion is made in open court; the only requirement is "the mere filing of the motion with the clerk of the court." Shadowbrook Affs. v. Abu Ahmad, 783 S.W.2d 210, 211 n.1 (Tex. App.-Houston [1st Dist.] 1990, no writ), cert. denied, 783 S.W.2d 212 (Tex.1982). While the date on which the trial court signs an order dismissing the suit is the "starting point for determining when a trial court's plenary power expires," a nonsuit is effective when it is filed. In re Bennett, 960 S.W.2d 35, 38 (Tex.1997); Tex. R. Civ. P. 329b. The trial court generally has no discretion to refuse to dismiss the suit, and its order doing so is ministerial. In re Bennett, 960 S.W.2d at 38; Shadowbrook, 783 S.W.2d at 211.	When a nonsuit is filed while a matter was pending on interlocutory appeal from a preliminary plea to the jurisdiction, the nonsuit extinguishes a case or controversy from the moment the motion is filed and an oral motion is made in open court. The only requirement is "the mere filing of the motion with the clerk of the court." Vernon's Ann.Texas Rules Civ.Proc., Rule 362.	Does the nonsuit extinguish a case or controversy from the moment the motion is filed or an oral motion is made in open court?	028631.docx	LEGALAE-00133054-LEGALAE-00133055	SA_Sub	0.7	0 0	1 1	1 1	1 1	1
1480	Ramirez v. Noble Energy, 521 S.W.3d 851	307A-486	Trial courts have broad discretion to permit or deny withdrawal of deemed admissions; however, courts cannot do so arbitrarily, unreasonably, or without reference to guiding rules or principles. Wheeler, 157 S.W.3d at 443; Cleveland, 397 S.W.3d at 694 (stating that we review trial court’s ruling on motion to withdraw deemed admissions under abuse-of-discretion standard). Courts exercise their authority to strike and are useful when addressing uncontested matters; they are not intended to be used to force a party to admit the validity of its claims or concede its defenses. See Marino v. King, 355 S.W.3d 628, 632 (Tex. 2011) (per curiam); Shelly v. Papana, 927 S.W.2d 620, 622 (Tex. 1996) (“[per curiam] [noting that requests for admissions were not intended “to be used as a demand upon a plaintiff or defendant to admit that he had no cause of action or ground of defense”].”). A request for admissions is “written question[s] [that] the other party admit the truth of any matter within the scope of discovery...” Tex.R. Civ. P. 193.1.” It is a response is not timely served, the request is considered admitted without the necessity of a court order.” Tex.R. Civ. P. 198.2(c). An admitted matter is “conclusively established as to the party making the admission.” Tex.R. Civ. P. 198.2(d). The parties agreed to stipulate that the admission was correct. Thus, the party to withdraw or amend the withdrawal is not entitled to a new hearing. The party who seeks to withdraw an admission if: (a) the party shows good cause for the withdrawal; (b) the court finds that the other party will not be unduly prejudiced; and (c) presentation of the lawsuit’s merits is served by the withdrawal. See id.; Cleveland v. Taylor, 397 S.W.3d 683, 694 (Tex.App.-Houston [1st Dist.] 2012, pet. denied).	Trial courts have broad discretion to permit or deny withdrawal of deemed admissions; however, courts cannot do so arbitrarily, unreasonably, or without reference to guiding rules or principles. Tex. R. Civ. P. 198.3.	"Trial courts have broad discretion to permit or deny withdrawal of deemed admissions; however, courts cannot do so arbitrarily, unreasonably, or without reference to guiding rules or principles?"	028503.docx	LEGALAE-00134665-LEGALAE-00134666	SA_Sub	0.76	0 0	1 1	1 1	1 1	1
1481	Time Warner v. Gonzalez, 441 S.W.3d 661	307A-486	The request for admissions is “written question[s] [that] the other party admit the truth of any matter within the scope of discovery...” Tex.R. Civ. P. 193.1.” It is a response is not timely served, the request is considered admitted without the necessity of a court order.” Tex.R. Civ. P. 198.2(c). An admitted matter is “conclusively established as to the party making the admission.” Tex.R. Civ. P. 198.2(d). The parties agreed to stipulate that the admission was correct. Thus, the party to withdraw or amend the withdrawal is not entitled to a new hearing. The party who seeks to withdraw an admission if: (a) the party shows good cause for the withdrawal; (b) the court finds that the other party will not be unduly prejudiced; and (c) presentation of the lawsuit’s merits is served by the withdrawal. See id.; Cleveland v. Taylor, 397 S.W.3d 683, 694 (Tex.App.-Houston [1st Dist.] 2012, pet. denied).	A trial court has discretion to permit a party to withdraw an admission if: (1) the party shows good cause for the withdrawal; (2) the court finds that the other party will not be unduly prejudiced; and (3) presentation of the lawsuit’s merits is served by the withdrawal. Vernon’s Ann.Texas Rules Civ.Proc., Rule 198.3.	Does a trial court have discretion to permit a party to withdraw an admission? If the party shows good cause for the withdrawal or if the court finds that the other party will not be unduly prejudiced and presentation of the lawsuit’s merits is served by the withdrawal?	Preltrial Procedure - Memo # 2904 - C - NG.docx	R0SS-003330035-R0SS-003330036	SA_Sub	0.62	0 0	1 1	1 1	1 1	1
1482	State ex rel. Kramer v. Carroll, 305 S.W.2d 654	307A-659.1	We also say that the documentary evidence sought in the subpoena is irrelevant and immaterial to the issues of this case. The documentary evidence thus sought, other than item 2, was relator’s personal income tax returns from 1947 to 1956. The trial court is without jurisdiction to require the production of documentary evidence at the taking of depositions “unless such evidence is first shown to be relevant and material to the issues in the pending cause.” State ex rel. Preps v. Housley, 305 S.W.2d 651, 654 (Tex.1956). “[R]elevance means that evidence of financial condition is relevant and immaterial because that issue is removed from the case by relator’s admissions. The financial condition and ability of the party sought to be charged is a fact pertinent to the inquiry in an action for support and maintenance. It is not an ‘issue’ in Cause No. 210,148, however, because it is an admitted fact in that proceeding. Roberta’s petition alleged and relator specifically admitted his answer – that defendant father is a practicing attorney in Dallas County, Texas, and earns \$51,000 per year net of taxes and expenses of law and other financial interests, and is well able to provide the necessities of life for plaintiff.” Evidence is not necessary to prove an admitted fact. In this particular case respondent had no jurisdiction to command the production of the income tax returns.	Court is without jurisdiction to require production of documentary evidence at taking of depositions unless such evidence is first shown to be relevant and material to issues in pending cause.	Is a court without jurisdiction to require production of documentary evidence at taking of depositions unless such evidence is first shown to be relevant and material to issues in pending cause?	Preltrial Procedure - Memo # 2980 - C - KG.docx	R0SS-00331674-R0SS-00331675	SA_Sub	0.86	0 0	1 1	1 1	1 1	1

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Between Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
	Chambers v. Profit, 241 S.W.3d 679	307A+486	The trial court has broad discretion to permit or deny the withdrawal of admissions as long as it does not act unreasonably, arbitrarily, or without reference to guiding principles.	Trial court has broad discretion to permit or deny the withdrawal of deemed admissions as long as it does not act unreasonably, arbitrarily, or without reference to guiding principles.	"Does the trial court have broad discretion to permit or deny the withdrawal of deemed admissions as long as it does not act unreasonably, arbitrarily, or without reference to guiding principles?"	020844.docx	LEGALCASE-00134497- LEGALCASE-00134498	SA, Sub	0.82	0	15,344	14,873	21,876	9,079
1483														
	Speckler v. Petroff, 971 S.W.2d 336	307A+486	Good cause has been adopted as the threshold standard for the withdrawal of admissions. The court has broad discretion to permit or deny the withdrawal of admissions as long as it does not act unreasonably, arbitrarily, or without reference to guiding principles. See, e.g., <i>Shelly</i> , 972 S.W.2d at 622. Even a slight excuse will suffice, especially when delay or prejudice to the opposing party will not result. <i>Halton</i> , 792 S.W.2d at 466.	Party can establish "good cause" for withdrawal of deemed admissions by showing that its failure to answer was accidental or result of conscious indifference. <i>Vernon's Ann. Texas Rules Civ. Proc.</i> , Rule 169(2).	"Can a party establish 'good cause' for withdrawal of deemed admissions as long as it does not act unreasonably, arbitrarily, or result of mistake, rather than intentional or result of conscious indifference?"	020897.docx	LEGALCASE-00134728- LEGALCASE-00134729	SA, Sub	0.42	0	0	1	1	
1484														
	Wheeler v. Green, 157 S.W.3d 459	228+483	Undue prejudice depends on whether withdrawing an admission or filing a late response will delay trial or significantly hamper the opposing party's ability to prepare for trial. <i>Shelly</i> , 972 S.W.2d at 622. Even a slight excuse will suffice, especially when delay or prejudice to the opposing party will not result. <i>Halton</i> , 792 S.W.2d at 466.	Undue prejudice, as element for withdrawing deemed admissions or for allowing a late summary judgment response, depends on whether withdrawing an admission or filing a late response will delay trial or significantly hamper the opposing party's ability to prepare for trial. <i>Vernon's Ann. Texas Rules Civ. Proc.</i> , Rules 166(c), 198.3.	"Does undue prejudice, depend on whether withdrawing an admission or filing a late response will delay trial or significantly hamper the opposing party's ability to prepare for trial?"	020905.docx	LEGALCASE-00134619- LEGALCASE-00134620	Condensed SA, Sub	0.56	0	1	1	1	1
1485														
	Reeves v. Bauman, 769 P.2d 917	307A+483	It is a well-established principle of this court that it will affirm the decision of the trial court where sustainable in the record on any proper legal theory. <i>Kane v. Kane</i> , 706 P.2d 676 (Wyo.1985). The effect of admissions pursuant to W.R.C.P. 36(b) does not mean that the favored litigant is necessarily absolved from further proof to justify recovery or establish its amount. All dispositive facts involving recovery were not included in undisputed admissions. <i>Rules Civ. Proc.</i> , Rules 36(f), 36(b).	Effect of admissions does not mean that favored litigant is necessarily absolved from further proof to justify recovery or establish its amount. If all dispositive facts involving recovery were not included in undisputed admissions. <i>Rules Civ. Proc.</i> , Rules 36(f), 36(b).	Does the effect of admissions not mean that a favored litigant is necessarily absolved from further proof to justify recovery or establish its amount if all dispositive facts involving recovery were not included in undisputed admissions?	Pertrial Procedure - Memo # 3499 - C- ES.docx	ROSS-003005148	SA, Sub	0.6	0	0	1	1	
1486														
	Shpe v. Jaber, 147 N.C. App. 148	307A+483	According to G.S. "JA-1, Rule 36(a), matters as to which admission is requested are deemed admitted unless the party to whom the request is directed serves a written response within the time permitted by the rule. <i>Shpe v. Jaber</i> , 147 N.C. App. 148, 149 (2000). Under Rule 36(a), the party's motion, N.C. Gen. Stat. "JA-1, Rule 36(b) (2000). <i>Whitney</i> , 65 N.C.App. 679, 309 S.E.2d 712 (1983). Once a matter is admitted by failure to respond, the matter is conclusively established for purposes of the pending action unless the court, upon motion, allows withdrawal or amendment of the admission. N.C. Gen. Stat. "JA-1, Rule 36. Moreover, matters admitted pursuant to Rule 36(b) may be sufficient to support a grant of summary judgment. <i>Rhoads v. Bryant</i> , 56 N.C.App. 632, 283 S.E.2d 657, disc. review denied, 306 N.C. 386, 294 S.E.2d 211 (1982).	Under civil procedure rules, matters as to which admission is requested are deemed admitted unless party to whom request is directed serves written response within time permitted by rule. <i>Rules Civ. Proc.</i> , Rule 36(f), G.S. 5-31A-1.	"Under civil procedure rules, matters as to which admission is requested are deemed admitted unless party to whom request is directed serves written response within time permitted by rule?"	030027.docx	LEGALCASE-00134883- LEGALCASE-00134884	Order SA, Sub	0.73	1	0	1	1	1
1487														
	The Janko, 54 F. Supp. 2d 1221-162	221+462	Disputes the assumption must be that when a friendly foreign government represents that it is in possession of a public vessel used in the public service, such possession and use are lawful. Comity would not permit in the present case an exploration as to whether the seizure of the Janko by the Dutch Prize Court was lawful. Comity binds the courts as to the law of the country in which the vessel was seized. <i>139, 143, 401 Fed. 95</i> . The Supreme Court said that comity "is the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws." The courts of the United States will not sit in judgment on the acts of another government done within its own territory. See <i>American Banana Co. v. Republic of Ecuador</i> , 213 U.S. 349, 29 S.Ct. 286, 53 L.Ed. 297, 1007 Central (1908). <i>Central Bank</i> , 246 U.S. 297, 38 Ct. 309, 62 L.Ed. 726; <i>Banco de Espana v. Federal Reserve Bank</i> , 2 Cr., 114 F.2d 438.	"Comity", which is recognition which one nation allows within its territory to legislative, executive or judicial acts of another nation, binds the courts as well as the diplomatic channels.	"Does comity bind the courts as well as diplomatic channels, and is it the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation?"	International Law - Memo #1052 ANC.docx	ROSS-003290539-ROSS- (003290630)	Condensed SA, Sub	0.83	0	1	1	1	1
1488														
	Ohio CAT v. Stoneman, 2015-Ohio-3546	307A+486	When a party fails to timely respond to the request for admissions, "the admissions become facts of record which the court must recognize." <i>Cleveland Trust Co. v. Willis</i> , 20 Ohio 534 d 66, 67, 485 N.2d 1062 (1982). It is a principle of comity that one nation allows within its territory to the legislative, executive, or judicial acts of another nation having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws." The courts of the United States will not sit in judgment on the acts of another government done within its own territory. See <i>American Banana Co. v. Republic of Ecuador</i> , 213 U.S. 349, 29 S.Ct. 286, 53 L.Ed. 297, 1007 Central (1908). <i>Central Bank</i> , 246 U.S. 297, 38 Ct. 309, 62 L.Ed. 726; <i>Banco de Espana v. Federal Reserve Bank</i> , 2 Cr., 114 F.2d 438.	When a party fails to timely respond to the request for admissions and the admissions become facts of record by operation of law, it is within the trial court's discretion whether it will allow the withdrawal of admissions. <i>Rules Civ. Proc.</i> , Rule 36.	"When a party fails to timely respond to the request for the admissions and the admissions become facts of record by operation of law, is it within the trial court's discretion whether it will allow the withdrawal of admissions?"	Pertrial Procedure - Memo #2775 - C- DA.docx	ROSS-003290640-ROSS- (003290641)	Condensed SA, Sub	0.6	0	1	1	1	1
1489														

[illegible]

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Between Trial and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
1496	Robinson v. Glob. Res., 300 Ga.App. 139	307A+483	One must comply strictly and literally with the terms of the statute upon the grant of having the denial of admission to be based on the statute. S.E.2d 810. Thus, matters deemed admitted under this statute become the sole admissions in judgment and are conclusive as a matter of law on the matters stated and cannot be contradicted by other evidence unless the admissions are withdrawn or amended on formal motion. (Punctuation omitted) For Real Properties, supra, 288 Ga.App. at 156(1), 684 S.E.2d 876.	Matters deemed admitted under statute governing failure to timely respond to requests for admissions become admissions in judgment and are conclusive as a matter of law on the matters stated? or amended on formal motion. West's Ga.Code Ann. § 9-11-36(a, b).	Do matters deemed admitted under statute governing failure to timely respond to requests for admissions become admissions in judgment and are conclusive as a matter of law on the matters stated?	Pretrial Procedure - Memo #386 - C-58.docx	KOSS-00337910-KOSS-00337911	Condensed, Order, SA, Sub	0.39	1	15,344	14,873	21,876	9,079
1497	Wright v. Am. Rest. 31520533	307A+485	When ruling whether Local Favorite had a reasonable ground to deny the request for admission, the trial court could consider only evidence that Local Favorite had at the time of the denial. When determining whether a party had a reasonable ground to deny a request for admission, the trial court is limited to considering the information the party had in its possession, or reasonably could have obtained from other sources, at the time of the denial. (Wimberly v. Derby Cycle Corp. (1997) 56 Cal.App.4th 618, 637-638, 65 Cal.Rptr.2d 552.) In this state, parties are not obligated to conduct discovery to determine the truth of the facts asserted in the motion. (Rains v. Green (2000) 132 Cal.App.4th 352, 359, 88 Cal.Rptr.2d 113.) and Local Favorite was therefore under no obligation to amend its response based on information it obtained after it served its responses.	In determining whether defendant had reasonable ground to deny request for admission in personal injury action, trial court could consider only evidence defendant had at time of denial, for purpose of determining whether plaintiff was entitled to attorney fees. West's Am.Cal.C.P. § 2033(b).	"Can a court consider only the evidence a defendant had at time of denial, for purpose of determining whether plaintiff was entitled to attorney fees in determining whether defendant had reasonable ground to deny request for admission in personal injury action?"	03086.docx	LEGALASE-00135015-LEGALASE-00135016	Condensed, SA, Sub	0.66	0	1	1	1	1
1498	Scheiner v. Winter, 2002 WL 120561	307A+485	A court's determination that the amount requested is unreasonable alone does not justify denial of an award of costs of proof. Code of Civil Procedure, § 1033.5, requires the court to determine a reasonable amount. There is no authority for the denial of a mandatory award in those circumstances. We conclude that the evidence presented in support of Scheiner's motions was sufficient for the court to determine the reasonable amount of expenses incurred due to the defendants' failure to admit the matters requested. The detailed attorney bills indicate the amount of time actually expended on specified tasks and the dates of that time. The court's determination of the reasonable amount of fees is based on litigation, and its knowledge and experience concerning the value of legal services, there was a ample information for the trial court to determine the reasonable amount of fees incurred due to the defendants' failure to admit the matters requested. The court abused its discretion by refusing to do so.	A court's determination that amount requested is unreasonable alone does not justify denial of an award of costs of proof. If the court determines that the amount requested is unreasonable, it must determine a reasonable amount. West's Am.Cal.C.P. § 2033, subd. o.	"Does a court's determination that amount requested is unreasonable, justify denial of an award of costs of proof? If so, how should the court determine a reasonable amount?"	03086.docx	LEGALASE-00135071-LEGALASE-00135072	Condensed, SA, Sub	0.76	0	1	1	1	1
1499	Amick v. Collins, 366 S.C. 204	307A+720	The decision whether to grant leave to amend is within the sound discretion of the trial judge. Sell & Material Eng'g's, Inc. v. Poly Assoc., 298 S.C. 698, 501, 361 S.E.2d 779, 781 (Ct.App.1987). However, when late amendment would cause prejudice to the opposing party, the trial court should either deny the amendment or grant a continuance to allow the time reasonably necessary to prepare for the new issue. Rules Civ. Proc., Rule 15.	When a late amendment to a pleading would cause prejudice to the opposing party, the trial court should either deny the amendment or grant a continuance to allow the time reasonably necessary to prepare for the new issue. Rules Civ. Proc., Rule 15.	"When a late amendment to a pleading would cause prejudice to the opposing party, should the trial court either deny the amendment or grant a continuance?"	03074E.docx	LEGALASE-00135749-LEGALASE-00135750	SA, Sub	0.62	0	0	1	1	
1500	Acorn Iron Works v. Auditor Gen., 235 Mich. 143	371+1001	The state board of tax administration from time to time has changed its construction and method of enforcing the sales tax law as it affects building trade transactions; but in this connection it is sufficient to note that liability for payment of the sales tax is controlled by statute. It cannot be imposed by rulings or regulations of the board. (Tax exactions, property or excise, must rest upon legislative enactment and collectors have no authority to impose any tax or excise, the scope of such law is not controlled by judicial or forced construction, and the language, if dubious, is not resolved against the taxpayer.") (Pillabusi), B. Simpson, Inc. v. O'Hara, 277 Mich. 55, 268 N.W. 809.	Tax exactions, property or excise, must rest upon legislative enactment, and collectors can act only within express authority conferred thereby, and the scope of such laws cannot be extended by implication or forced construction, and language, if dubious, is not resolved against the taxpayer.	"Does tax exactions, property or excise, rest upon legislative enactment?"	Taxation - Memo # 45 - C-18BA.docx	KOSS-003291312-KOSS-003291313	SA, Sub	0.59	0	0	1	1	
1501	State v. Agan, 259 Ga. 541	316P+351	The Ethics in Government Act has in no manner altered the bribery statute. The Act simply defines a campaign contribution and, having defined, requires disclosure. Specifically, nothing in the Act permits a defendant to argue that the Act has altered the bribery statute, or that the defendant is not entitled with the purpose of influencing him in the performance of any act related to the functions of his office or employment... ("OCGA," 16 "10"1(a)). Nor is the term "entitled," as contained in the bribery statute, modified in any way by the Ethics in Government Act. Other than those enforcements of public office that are expressly authorized and established by law, no holder of public office is entitled to request or "reserve" from any source, directly or indirectly anything of value in "reserve" for the performance of any act related to the functions of that office.	Other than those enforcements of public office that are expressly authorized and established by law, no holder of public office is entitled to request or receive, from any source, directly or indirectly, anything of value in exchange for the performance of any act related to the functions of that office. O.C.G.A. § 5-16-10-2, 21-5-1-11-14.	"Under bribery statute, what is a holder of public office entitled to request or receive, from any source, directly or indirectly, anything of value in exchange for the performance of any act related to the functions of that office?"	Bribery - Memo #545 - C-0033-003330988-KOSS-003310989	KOSS-003330988-KOSS-003310989	SA, Sub	0.61	0	0	1	1	
1502	Cross v. Cross, 893 N.E.2d 635	307A+486	Victoria, on the other hand, argues that Craig has failed to show that he was prejudiced by the trial court's grant of her motion to withdraw admissions. In the context of Ind. Trial Rule 36(b), "prejudice" does not mean that the party who has obtained the admission will lose the benefit of the admissions; rather, it means that the party has suffered a detriment in the preparation of its case. Trial Procedure Rule 36(b).	In the context of rule allowing a party deemed to have made admissions due to failure to respond to request for admissions to seek withdrawal of admissions, "prejudice" does not mean that the party who has obtained the admission will lose the benefit of the admissions; rather, it means that the party has suffered a detriment in the preparation of its case. Trial Procedure Rule 36(b).	"In the context of rule allowing a party deemed to have made admissions due to failure to respond to request for admissions to seek withdrawal of admissions, "prejudice" does not mean that the party who has obtained the admission will lose the benefit of the admissions; rather, it means that the party who has obtained the admission will lose the benefit of the admissions?"	020211.docx	LEGALASE-00136607-LEGALASE-00136608	Order, SA, Sub	0.52	1	0	1	1	1

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences	
	Every v. City of New Orleans, 534 So. 2d 556	307A7216	A mandatory continuance must be granted when a party, despite due diligence, has been unable to obtain material evidence, or when a material witness has absented himself without continuance of the party. LSA-C.C.P. Art. 1602. A discretionary continuance may be granted in the instance if there is "good ground" therefor. LSA-C.C.P. Art. 1601. Unless it would be unfair to the parties, a plaintiff whose lawyer withdraws at or near trial may be entitled to a continuance to employ another attorney. Sands v. State Through La. State Med., 458 So.2d 960 (La App. 4th Cir. 1984), writ denied, 460 So.2d 1044 (La. 1984); Marpo, Inc. v. South States Pipe & Supply, 377 So.2d 525 (La App. 3rd Cir. 1979). Nonetheless, because the court cannot be closed to a defendant who desires to bring the case to trial, a plaintiff is not entitled to indefinite continuances simply because he has discharged his lawyer. Sands v. State Through La. State Med., supra. Among the factors a trial judge considers before granting a continuance are diligence, good faith, and reasonable grounds. Katz v. Melancon, 467 So.2d 1284 (La App. 4th Cir. 1985). The judge has wide discretion in acting upon a motion for continuance under LSA-C.C.P. Art. 1601, and his ruling will not be disturbed on appeal unless he clearly abused his discretion. Saucier v. Russell, 298 So.2d 632 (La.3/74).	Even though a litigant whose lawyer withdrew at or near trial may be entitled to a continuance to employ another attorney, absent unfairness to the parties, a plaintiff is not entitled to indefinite continuances simply because he has discharged his lawyer, because the court cannot be closed to a defendant who desires to bring a case to trial. LSA-C.C.P. art. 1601.	Is a plaintiff entitled to indefinite continuances simply because he has discharged his lawyer?	023414.docx	LEGALASE-00136245-LEGALASE-00136246	Condensed, SA, Sub 0.73	0	1	1	15,344	14,873	21,876	9,029
1503														1	
	Hicks v. Inoke, 507 S.W.2d 732	307A7215	The first claim is predicated upon the assertion that the unavoidable absence of defendant at the trial constituted grounds for the continuance and failure of the trial court to grant the continuance was an abuse of discretion which prejudiced the defendant. The grant or denial of a continuance is within the discretion of the trial court, and every defendant is presumed to be in compliance with the court's ruling. Blesson v. Blesson, 539 S.W.2d 699 (Mo.App.1976). Whether in a given case there is sufficient reason to grant a continuance is to be determined by the trial court. A trial court has the right to control its docket, and the unavoidable absence of a party or his attorney due to an engagement elsewhere, illness, or weather conditions does not compel a continuance. Erhart v. Todd, 325 S.W.2d 750 (Mo. 1959); Blesson, supra. Savings Finance Corporation v. Blair, 280 S.W.2d 675 (Mo App. 1955). Under the circumstances of this case, the trial court did not abuse its discretion in denying the continuance three days before the date set for trial.	A trial court has the right to control its docket, and the unavoidable absence of a party or his attorney due to an engagement elsewhere, illness, or weather conditions does not compel a continuance.	"Does a trial court have the right to control its docket, and the unavoidable absence of a party or his attorney due to an engagement elsewhere, illness, or weather conditions does not compel a continuance?"	023464.docx	LEGALASE-00136467-LEGALASE-00136468	Condensed, SA	0.81	0	1	0	1		
1504														1	
	Cline v. Prowler Indus. of Maryland, 418 A.2d 988	307A4485	Superior Court Rule 37(1) requires that reasonable expenses be awarded to a party litigant when an opposing party refuses or fails to admit the truth of a requested admission and that requested admission is later proved to be true. A party is not relieved from paying the moving party's expenses unless: (1) the request was held objectionable under Superior Court Rule 36(a); (2) the admission sought was of no substantial importance; (3) the party failing to admit had reasonable grounds to believe that it might prevail on the matter; and (4) there was other good reason for failure to admit. Since awards under the Rule are made in the discretion of the Court, they are subject to reversal only if an abuse of that discretion is found. See Wieman v. Signal Finance Corp., Del Supr., 385 A.2d 689 (1978).	Award under Superior Court Rule requiring reasonable expenses to be awarded to a party litigant when opposing party refuses or fails to admit truth of requested admission and requested admission is later proved to be true? Superior Court Rules, Civil Rules 36(a), 37(c), Del.C.cmn.	Are reasonable expenses to be awarded to a party litigant when opposing party refuses or fails to admit truth of requested admission and requested admission is later proved to be true?	030257.docx	LEGALASE-00136917-LEGALASE-00136919	Condensed, SA, Sub 0.56	0	1	1	1	1		1
1505															
	Rainwater v. Haddock, 544 S.W.2d 729	307A723.1	At the outset, we note that there was no error in the denial of the oral motion for a continuance. For a continuance, Rules 251 and 252 require an application accompanied by affidavit setting forth sufficient cause. Where an application for continuance fails to conform to the rules, the denial of a continuance comes within the sound discretion of the court and it will be presumed, absent a showing of abuse of discretion, that the court properly exercised its discretion. Rules of Civil Procedure, rules 251, 252. See, e.g., State, 525 S.W.2d 933, 941 (Tex.Civ.App.,Houston [1st Dist.] 1975, no writ). The court did not abuse its discretion in denying the oral motion for continuance when it developed there was no reasonable expectation of locating Rainwater. The sixth point of error is overruled.	Where application for continuance fails to conform to rules, denial of continuance comes within sound discretion of court and it will be presumed, absent a showing of abuse of discretion, that court properly exercised its discretion. Rules of Civil Procedure, rules 251, 252.	"Where application for continuance fails to conform to rules, does the denial of continuance come within the sound discretion of court and it will be presumed, absent a showing of abuse of discretion?"	030272.docx	LEGALASE-00136684-LEGALASE-00136685	SA, Sub	0.67	0	0	1	1		
1506															
	Kiesch v. Reid, 95 Ohio App.3d 604	307A4483	In the instant case, it is necessary that we touch on the relationship between Civ.R. 36, failure to answer a request for admission, and Civ.R. 56(C), elements necessary before a court considers a motion for summary judgment. Civ.R. 36 provides that a written admission is sufficient to grant a motion for summary judgment, among other things. The question then becomes whether a failure to answer to a written request for admission is sufficient to satisfy the requirements of Civ.R. 36 that an admission be made in writing. We answer that question in the affirmative, and thus hold that where a party files a written request for admission a failure of the opposing party to answer that request constitutes a failure of the opposing admission pursuant to Civ.R. 36 and also satisfies the written answer requirement of Civ.R. 56(C) in case of a summary judgment. See T & S Lumber Co. v. Alta Constr. Co. (1984), 19 Ohio App.3d 241, 19 OBR 393, 483 N.E.2d 1216. The record shows that even after the motion for summary judgment was filed, based on appellants' failure to respond to the request, appellants still ignored appellee's request for admission. See Sandler v. Gosick (1993), 87 Ohio App.3d 372, 622 N.E.2d 389.	Where party files written request for admission, failure of opposing party to timely answer request constitutes conclusive admission and also constitutes failure to answer requirement in case of summary judgment, and also satisfies a written answer requirement of a summary judgment rule?	"Where party files written request for admission, does failure of an opposing party to timely answer request constitutes conclusive admission, and also satisfies a written answer requirement of a summary judgment rule?"	030441.docx	LEGALASE-00136299-LEGALASE-00136300	Condensed, SA, Sub 0.75	0	1	1	1	1		1
1507															

Application of

ROW	Judicial Opinion	WKMS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
1513	Schwarz v. Patts Valley Exterminating, 258 Neb. 841.	307A+483	We have held that a party's failure to make a timely and appropriate response to a request for admission constitutes an admission of the subject matter of the request, which matter is conclusively established unless, on motion, the court permits withdrawal of the admission. We have also held that a party who fails to respond to a request for admission by failing to answer or object to the request does not thereby prevent the court from granting summary judgment based on its failure to respond properly to a request for admission, must prove service of the request for admission and the served party's failure to answer or object to the request. Discovery Rule 36.	Rule governing requests for admissions is not self-executing, but requires that a party, claiming another party's admission by failure to respond properly to a request for admission, must prove service of the request for admission and the served party's failure to answer or object to the request. Discovery Rule 36.	"Is the rule governing requests for admissions self-executing and does it require a party, claiming another party's admission by failure to respond properly to a request for admission, to offer the request for admission as evidence?"	Preltrial Procedure-- Memo # 4707 - C-AF.docx	R05-0030304244-R05S-00330425	Condensed-SA_Sub 0.68	0	839	15,344	14,873	21,876	9,029
1514	State v. McLeod, 199 La. 372.	307A+156	We are unable to discern merit in this point. The provision of Article 158 that dispositions shall be signed by the witnesses was obviously inserted therefor for the benefit of the State and of the accused for the purpose of avoiding the possibility that the deponents might later take the witness stand at the trial and deny the verity of their testimony. We cannot say that any person who requests a deposition may not be accompanied by his attorney. At all times, he is entitled to the aid of counsel. It is the duty of the court to see that the waiver of the formality of counsel for the accused in this case resounds by her detriment.	The statutory provision that depositions be signed by witnesses was for the purpose of avoiding the possibility that deponents might later take the witness stand at the trial and deny the verity of their testimony, and such provision could be waived by the parties, and in any event, where waiver of signature was not to the defendant's detriment, she could not complain. Code Civ. Proc. art. 158.	Is the statutory provision that depositions be signed by witnesses for the purpose of avoiding the possibility that deponents might later take the witness stand at the trial and deny the verity of their testimony?	Preltrial Procedure-- Memo # 4896 - C-NE.docx	R05-002031781-R05S-00329782	Condensed-SA_Sub 0.34	0	1	1	1	1	1
1515	Greenblatt v. Kaplan's Rest., 177 Cal.App. 3d 991.	307A+726	With these rules of construction in mind, we conclude that subdivision (e) should not have been interpreted so literally as to bar plaintiff's request to take the matter off calendar. We surmise the legislature enacted subdivision (e) to protect the public interest in the prompt trial of cases brought to specially set. However, where, as here, the elderly person who requests an early trial date because of ill health finds that illness or infirmity prevents his ability to go to trial within the 120 day period, he should not be forced to choose between a trial without his presence or dismissal. A literal reading of subdivision (e) leads to this anomalous result. We hold the one continuance rule of subdivision (e) should not be interpreted to take the plaintiff's motion to take the matter off calendar.	One continuance rule of West's Am.Cal.C.C.P. § 36(b) governing motion for performance of party who has reached age 70 should not be interpreted to bar party's motion to take matter off calendar, where elderly party seeks to avoid trial without his presence and infirmity prevents his or her ability to go to trial within 120-day period.	Will one continuance rule governing motion for preference of elderly party be interpreted to bar party's motion to take the matter off the calendar?	031792.docx	LEGALEASE-00138093S-LEGALEASE-00138040	Condensed-SA_Sub 0.54	0	1	1	1	1	1
1516	Ward v. Gerald E. Prince Const., 293 Ark. 59	307A+36.1	Rule 1006 does not require that a party notify an opposing party that he intends to introduce a summary. Instead, if merely mandates the originals, or duplicates, which are underlying documents of a summary, to be made available for examination or copying or both, by other parties at least ten days before the hearing on the summary. See, e.g., Fed.R. 2-F-2430 (RCP 1983). In addition, the rule allows the trial court discretion to order those 106 documents be produced in court. Our court ordered production of such documents in Whison v. State, 277 Ark. 341, 642 S.W.2d 292 (1982). There, the trial court directed the state, during trial, to produce documents located in the Washington County collector's office, after permitting an auditor to testify concerning his summary of the records. The court found no error in the trial court's ruling. Defendant's counsel a continuance to afford him an opportunity to examine the documents, counsel declined the offer. This court volunteered approval of the manner in which the trial court handled the matter.	Rule of evidence controlling admissibility of summaries does not require that party notify opposing party that he intends to introduce a summary; instead, it merely mandates the originals, or duplicates, which are underlying documents of a summary, be made available for examination or copying or both, by other parties at reasonable time and place. Rules of Evld. Rule 1006.	Does the rule of evidence controlling admissibility of summaries not require that party notify opposing party that he intends to introduce a summary?	031932.docx	LEGALEASE-00138005S-LEGALEASE-00138010	Condensed-SA_Sub 0.65	0	1	1	1	1	1
1517	Scully v. City of Philadelphia, 301 Pa. 1	266+806(1)	It has been well settled that where an accident occurs in broad daylight and the pedestrian is not required to keep his vision fixed continually on the ground to discover possible points of danger? especially where his attention must also be directed toward the imminent peril of approaching vehicles.	A pedestrian is not required to keep his vision fixed continually on the ground to discover possible points of danger? especially where his attention must also be directed toward the imminent peril of approaching vehicles.	Is a pedestrian required to keep his vision fixed continually on the ground to discover possible points of danger?	Highways- Memo 123- AF.docx	R05-003030396S-R05S-00330397	SA_Sub	0.92	0	0	1	1	1

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	Scott v. Scott, 147 S.W. 3d 487	307A-723.1	Rule 65.03, which prescribes the proper procedure for seeking a continuance, provides, in pertinent part, that: "An application for a continuance must be made by the party seeking the continuance, and the affidavit of the applicant or some other credible person setting forth the facts upon which the application is based, unless the adverse party consents that the application for continuance be made orally." Failure to follow "the simple, explicit, and mandatory procedure to properly present a motion for continuance" renders the motion deficient, meaning the trial court is not obligated to consider the motion. <i>Bydalek</i> , 29 S.W.3d at 856 (citing <i>Nixon v. Dir. of Revenue</i> , 883 S.W.2d 946, 946 (Mo.App.1994)).	Failure to follow the simple, explicit, and mandatory procedure to properly present a motion for continuance renders the motion deficient, meaning the trial court is not obligated to consider the motion. <i>Bydalek</i> , 29 S.W.3d at 856.	"Does failure to follow the simple, explicit, and mandatory procedure to properly present a motion for continuance render the motion deficient, meaning the trial court is not obligated to consider the motion?"	Petrial Procedure - Memo # 4 125 - C- NC.docx	R055-003291192-A055-003291108	SA, Sub	0.8	0	1	14,873	21,876	9,079
1518			<i>Smith</i> , 952 S.W.2d 771, 773 (Mo.App.1997). Put another way, "when a moving party ignores the affidavit or verification requirements of Rule 65.03, no abuse can result in denying the continuance." <i>Bydalek</i> , 29 S.W.3d at 856.											
	<i>Hadley v. Burns</i> , 11 Ohio St. 3d 118	307A-720	Motion for, even in the event an objecting party is not opposed for evidence offered outside the pleadings, the court may still allow an amendment under Civ.R. 15(B) and grant a continuance to enable the objecting party to meet the new evidence. <i>Hardin v. Manitowoc-Forsythe Corp.</i> , supra, at 457; <i>Hodgson v. Colomades, Inc.</i> , supra, at 48, fn. 10; <i>Deakney v. Comms.</i> , of Lewis, supra, at 299; <i>Robbins v. Jordan</i> , supra, at 795; <i>Southern Coast Corp. v. Sinclair Refining Co.</i> , supra, at 962; <i>Watson v. Cannon Shoe Co.</i> (C.A.S. 3948), 305 S.W.2d 311, 313. The delay which results in an amendment is sufficient basis upon which to deny the amendment. <i>Deakney v. Comms.</i> , of Lewis, supra, at 300, fn. 15.	Even in the event an objecting party is not opposed for evidence offered outside the pleadings, trial court may still allow an amendment under rule governing a amendment of pleadings to conform to evidence and grant a continuance to enable objecting party to meet the new evidence. Rules Civ.Proc., Rule 15(B).	"Even in the event an objecting party is not opposed for evidence offered outside the pleadings, trial court may still allow an amendment?"	030888.docx	LEGASE-00138823-LEGASE-00138823	SA, Sub	0.56	0	0	1	1	
1519			Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. <i>Shahin v. Hilker</i> , 241 Neb. 482, 488 N.W.2d 571 (1992). See, also, Neb.C.R. of Discovery 26(b)(1) (rev.1992). For purposes of ensuring a fundamentally fair trial, the question of whether a disqualified law firm is participating with a successor counsel is highly relevant to a pending action.	For purposes of ensuring a fundamentally fair trial, question of whether a disqualified law firm is participating with successor counsel is highly relevant to pending action, for purposes of determining discoverability of fee arrangement.	"For purposes of ensuring a fundamentally fair trial, is the question of whether a disqualified law firm is participating with a successor counsel highly relevant to pending action?"	031850.docx	LEGASE-00138802-LEGASE-00138803	Condensed SA, Sub	0.45	0	1	1	1	
1520	State ex rel. FirstTier Bank, N.A. v. Mullen, 248 Neb. 384	307A-316.1	Under this Court's precedents, a public official is not required to actually make a decision or take an action on a "question, matter, cause, suit, proceeding or controversy"; it is enough that the official agree to do so. See Evans, 504 U.S., at 288, 112 S.Ct. 1881. The agreement need not be explicit, and the public official need not specify the means that he will use to perform his or her bargain. Nor must the public official in fact agree to perform the bargain. It is enough that the public official in fact could, for example, conclude that an agreement was reached if the evidence shows that the public official received a thing of value knowing that it was given with the expectation that the official would perform an "official act" in return. See <i>Id.</i> It is up to the jury, under the facts of the case, to determine whether the public official agreed to perform an "official act" at the time of the alleged quid pro quo. The jury may consider a broad range of pertinent evidence, including the nature of the transaction, to answer that question.	It is up to the jury, under the facts of the case, to determine whether a public official agreed to perform an "official act," for purposes of the federal bribery statute, which makes it a crime for a public official to demand or anything of value in return for being influenced in the performance of any official act, at the time of the alleged quid pro quo; the jury may consider a broad range of pertinent evidence, including the nature of the transaction, to answer that question. 18 U.S.C.A. 5 201(b)(3) (b)(2).		031079.docx	LEGASE-00139216-LEGASE-00139217	Condensed SA, Sub	0.51	0	1	1	1	
1521	McDonnell v. United States, 136 S. Ct. 2355	307A-747.1	Trial courts are afforded broad discretion to determine whether a situation entitles a "manifest injustice" sufficient to justify departure from pretrial scheduling orders. In making such a determination, courts should consider several factors, including the prejudice to the opposing party, the importance of the evidence to the party seeking to introduce it, and whether the party could have more diligently obtained that evidence with bolder solicitation.	Trial courts are afforded broad discretion to determine whether a situation entitles a manifest injustice sufficient to justify departure from pretrial scheduling orders. Rules Civ.Proc., Rule 16(e).	Are trial courts afforded broad discretion to determine whether a situation entitles a manifest injustice sufficient to justify departure from pretrial scheduling orders?	Petrial Procedure - Memo # 1393 - C- DA.docx	R055-003291192-A055-003291193	SA, Sub	0.56	0	0	1	1	
1522	Sowinski v. Walker, 198 P.3d 1134	307A-747.1	Trial courts are afforded broad discretion to determine whether a situation entitles a "manifest injustice" sufficient to justify departure from pretrial scheduling orders. In making such a determination, courts should consider several factors, including the prejudice to the opposing party, the importance of the evidence to the party seeking to introduce it, and whether the party could have more diligently obtained that evidence with bolder solicitation.	Trial courts are afforded broad discretion to determine whether a situation entitles a manifest injustice sufficient to justify departure from pretrial scheduling orders. Rules Civ.Proc., Rule 16(e).	Are trial courts afforded broad discretion to determine whether a situation entitles a manifest injustice sufficient to justify departure from pretrial scheduling orders?	Petrial Procedure - Memo # 1393 - C- DA.docx	R055-003291192-A055-003291193	SA, Sub	0.56	0	0	1	1	
1523	Tucker v. Tucker, 25 N.Y.2d 378	307A-501	While the authority of a court to grant or to deny an application made to it pursuant to CPLR 3217 (subd. [b]) by a party seeking voluntarily to discontinue litigation is within its sound discretion, ordinarily a party cannot be compelled to litigate and, absent special circumstances, discontinuance should be granted (4 Weinstein-Korn-Miller, N.Y. Civ. Prac. par. 3227.06). Particular prejudice to the defendant or other improper considerations may be shown, however, where the court's exercise of discretion is not permissible or, as the Appellate Division correctly held in this case, obligatory.	While authority of court to grant or to deny an application by a party seeking voluntarily to discontinue litigation is within its sound discretion, ordinarily a party cannot be compelled to litigate and, absent special circumstances, discontinuance should be granted. McKinney's CPLR 3217(b). McKinney's DRL 5 2316, Pts. A, B.	Can a party be compelled to litigate while authority of a court to grant or to deny an application seeking voluntarily to discontinue litigation is within its sound discretion?	Petrial Procedure - Memo # 5503 - C- NC.docx	R055-003291327-A055-003291328	Order SA, Sub	0.45	1	0	1	1	
1524	Richey v. United States, 322 F.3d 1317	34+6.2	Congress has given the military secretaries the power to correct military records using Civilian Corrections Boards. 10 U.S.C. " 1552(a)(1) (2000). An officer seeking correction of military records may either apply as an individual member of the Corrections Board, or have the matter referred to the military's Civilian Corrections Board. 10 U.S.C. 1552, 1555 (Fed.Cir.1988). If an officer elects to pursue a remedy before the Corrections Board, after the Board renders a final decision, the officer may effectively obtain review of that decision in the Court of Federal Claims by filing suit under the Tucker Act. Sanders, 594 F.2d at 811. Typically, if suit is filed just in the Court of Federal Claims, that court will require resort to a Corrections Board while the matter remains pending in that court.	An officer seeking correction of military records may either apply as an initial matter to a corrections board, or file suit under the Tucker Act in the Court of Federal Claims. 10 U.S.C.A. 1552(a)(1); 28 U.S.C.A. 15146, 1461.	"Can an officer seeking correction of military records apply as an initial matter to a corrections board, or file suit under the Tucker Act in the Court of Federal Claims?"	008540.docx	LEGASE-00139663-LEGASE-00139664	Condensed SA, Sub	0.72	0	1	1	1	

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Between Headnote and Opinion	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
1525	United States v. Schoenhub, 576 F.2d 1010 (9th Cir. 1978)	63+7	Because the essence of the offense under section 215 is endeavoring to procure a loan from a bank for a thing used by another to commit a crime, the defendant's failure to disclose the true nature of the loan, such a loan, a variance from the indictment in proof of who in fact received the loan is immaterial, where as here the officer was "informed of the nature of the charge against him so that he was enabled to present his defense, was not taken by surprise and protected against another prosecution for the same offense." Ferrari v. United States, 169 F.2d 353, 354 (9th Cir. 1948); see Berger v. United States, 295 U.S. 78, 81, 55 S.Ct. 623, 79 L.Ed. 1314 (1935). We therefore conclude that the variance in the indictment was harmless and that defendant's rights were substantially preserved.	Since essence of offense of receiving a fee for procuring a loan is endeavoring to procure a loan from a bank for a thing used by another to commit a crime, the defendant's failure to disclose the true nature of the loan, such a loan, a variance from the indictment in proof of who in fact received the loan is immaterial, where as here the officer was "informed of the nature of the charge against him so that he was enabled to present his defense, was not taken by surprise and protected against another prosecution for the same offense." Ferrari v. United States, 169 F.2d 353, 354 (9th Cir. 1948); see Berger v. United States, 295 U.S. 78, 81, 55 S.Ct. 623, 79 L.Ed. 1314 (1935). We therefore conclude that the variance in the indictment was harmless and that defendant's rights were substantially preserved.	What is the essence of the offense of receiving a fee for procuring a loan under 18 U.S.C. 215 under the Code?	011940.docx	LEGALISE-00139579- LEGALISE-00139580	SA, Sub	0.24	0	1	14,873	21,876	9,079
1526	Zavorai v. Pac. InterMountain Exp., 181 Neb. 40	388+9(1)	Generally, the effect of a pretrial order is to control the subsequent course of the action, and unless the order is modified at the trial to prevent a manifest injustice, the court may exclude evidence on issues not stated in the pretrial order, and such issues need not be submitted to jury.	Generally, the effect of a pretrial order is to control subsequent course of the action, and unless order is modified at trial to prevent manifest injustice, court may exclude evidence on issues not stated in pretrial order, and such issues need not be submitted to jury.	Does pre-trial order controls a subsequent course of action and can the trial court exclude evidence on issues not stated in the pretrial order?	028013.docx	LEGALISE-00139496- LEGALISE-00139497	Condensed, SA	0.18	0	1	0	1	
1527	Boule v. State, 189 S.W.3d 833	307A+486	An appellate court will not set aside a trial court's ruling to permit or deny the withdrawal of deemed admissions, unless it finds an abuse of discretion. Seeley v. Papana, 927 S.W.2d 620, 622 (Tex. 1996). Although the trial court has broad discretion to permit or deny the withdrawal of deemed admissions, it cannot do so arbitrarily, unreasonably, or without reference to guiding rules or principles. reference to guiding rules or principles. Wheeler, 357 S.W.3d at 444. With respect to discovery violations, the supreme court has made clear that absent the proper legal standard, the trial court has no discretion to impose the preclusive sanctions." Id.	Although the trial court has broad discretion to permit or deny the withdrawal of deemed admissions, it cannot do so arbitrarily, unreasonably, or without reference to guiding rules or principles. Verrion's Ann. Texas Rules Civ.Proc., Rule 198.3.	"Although the trial court has broad discretion to permit or deny the withdrawal of deemed admissions, it cannot do so arbitrarily, unreasonably, or without reference to guiding rules or principles?"	Perital Procedure - Memo 8 31300 - C - 58.docx	RDS-00302069-AC055- 003302070	SA, Sub	0.61	0	0	1	1	
1528	Roberts v. TriQuint Semiconductor, 338 Or. 413	307A+554	The question whether a trial court should dismiss an action on the basis of a forum-selection agreement "is a legal determination" that may be raised by way of a motion to dismiss for lack of jurisdiction over the subject matter. Rules Civ.Proc., Rule 21(A)(1).	The question whether a trial court should dismiss an action on the basis of a forum-selection agreement is a legal determination that may be raised by way of a motion to dismiss for lack of jurisdiction over the subject matter. Rules Civ.Proc., Rule 21(A)(1).	Is the question whether a trial court should dismiss an action on the basis of a forum-selection agreement a legal determination that may be raised by way of a motion to dismiss for lack of jurisdiction over the subject matter?	032793.docx	LEGALISE-00139673- LEGALISE-00139674	SA, Sub	0.68	0	0	1	1	
1529	Pechonias First Corp. v. Venture Planning Gr., 572 F. Supp. 503	170B+2792	It is permissible for a court to decide a pretrial motion to dismiss for lack of personal jurisdiction on the basis of affidavits alone. Marine Midland Bank, N.A. v. Miller, 664 F.2d 899, 904 (2nd Cir.1981). Such a procedure seems particularly appropriate in the instant case, where the opposing affidavits don't contradict each other as to the material facts. Disagreement is centered on the legal conclusions to be derived from those facts. Where this approach is followed, the plaintiff need make only a prima facie showing of jurisdiction through its affidavits, to defeat the defendant's motion to dismiss. The plaintiff's affidavits, if considered, Leigh Valley Industries, Inc. v. Birebaum, 527 F.2d 97, 92 (2nd Cir.1975). However, the allegations contained in the affidavits and complaint may not be merely conclusory, but must set forth specific facts connecting the defendants with the forum. Id. at 93. Greenspan v. Del E. Webb Corp., 634 F.2d 1304, n. 5 (9th Cir.1980).	It is permissible for a court to decide a pretrial motion to dismiss for lack of personal jurisdiction on the basis of affidavits alone. Marine Midland Bank, N.A. v. Miller, 664 F.2d 899, 904 (2nd Cir.1981). Such a procedure seems particularly appropriate in the instant case, where the opposing affidavits don't contradict each other as to the material facts. Disagreement is centered on the legal conclusions to be derived from those facts. Where this approach is followed, the plaintiff need make only a prima facie showing of jurisdiction through its affidavits, to defeat the defendant's motion to dismiss. The plaintiff's affidavits, if considered, Leigh Valley Industries, Inc. v. Birebaum, 527 F.2d 97, 92 (2nd Cir.1975). However, the allegations contained in the affidavits and complaint may not be merely conclusory, but must set forth specific facts connecting the defendants with the forum. Id. at 93. Greenspan v. Del E. Webb Corp., 634 F.2d 1304, n. 5 (9th Cir.1980).	"If a court chooses to rule on a motion to dismiss for lack of personal jurisdiction on the basis of affidavits alone, need the party opposing the motion make only a prima facie showing of jurisdiction?"	032793.docx	LEGALISE-00139673- LEGALISE-00139678	Condensed, SA, Sub	0.72	0	1	1	1	1
1530	Bacheller v. Maryland, 397 U.S. 564	173A+132	On this record, if the jury believed the State's evidence, petitioners' convictions could constitutionally have rested on a finding that they sat or lay across a public sidewalk with intent of fully blocking passage along it, or that they refused to obey police commands to stop obstructing the sidewalk in this manner and move on. See, e.g., Cox v. Louisiana (I), supra, 379 U.S. at 554-555, 85 S.Ct. at 464-465; Shuttlesworth v. Birmingham, 382 U.S. 87, 90-91, 86 S.Ct. 211, 213-214, 15 L.Ed.2d 176 (1965). It is impossible to say, however, that either of these grounds was the basis for the conviction. The evidence in the case was so conflicting that the verdict reached "merely because [petitioners'] views about Vietnam were themselves offensive to some of their hearers." Street v. New York, supra, 394 U.S., at 592, 89 S.Ct. at 1366. Thus, since petitioners' convictions may have rested on an unconstitutional ground, they must be set aside. The judgment of the Maryland Court of Special Appeals is reversed and the case is remanded for further proceedings not inconsistent with this opinion. It is so ordered.	Disorderly conduct convictions resting on a finding that accused sat or lay across a public sidewalk with intent of fully blocking passage along it, or that they refused to obey police commands to stop obstructing the sidewalk in this manner and move on would not violate Constitution. Code Md.1987, art. 27, § 123; Code Md.Supp. art. 27, § 123(c); U.S.C.A. Const. Amendments, 1, 14.	Is the conviction for blocking passage along sidewalk and refusal to obey police commands to stop obstructing sidewalk constitutional?	014653.docx	LEGALISE-00140193- LEGALISE-00140194	SA, Sub	0.67	0	0	1	1	

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Between Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
1337	Andra v. LetGate Prop. Holding, 453 S.W.3d 216	307A-554	When the motion to dismiss for lack of personal jurisdiction is based on facts not appearing in the record, a court may also consider affidavits and depositions properly filed in support of the motion. Mo. Sup. Ct. R. 55.28.	When a nonresident defendant's motion to dismiss for lack of personal jurisdiction is based on facts not appearing in the record, a trial court may consider affidavits and depositions properly filed in support of the motion. Mo. Sup. Ct. R. 55.28.	"When motion to dismiss for lack of personal jurisdiction is based on facts not appearing in the record, will a trial court consider affidavits and depositions properly filed in support of the motion?"	032806.docx	LEGALCASE-00141505-LEGALCASE-00141506	SA, Sub	0.79	0	1	14,873	21,876	9,079
			When the motion to dismiss for lack of personal jurisdiction is based on facts not appearing in the record, a court may also consider affidavits and depositions properly filed in support of the motion. Mo. Sup. Ct. R. 55.28.	When a nonresident defendant's motion to dismiss for lack of personal jurisdiction is based on facts not appearing in the record, a trial court may consider affidavits and depositions properly filed in support of the motion. Mo. Sup. Ct. R. 55.28.	"When motion to dismiss for lack of personal jurisdiction is based on facts not appearing in the record, will a trial court consider affidavits and depositions properly filed in support of the motion?"	032806.docx	LEGALCASE-00141505-LEGALCASE-00141506	SA, Sub	0.79	0	1	14,873	21,876	9,079
1338	Patton v. Iowa, 212 S.W.3d 541	302A-104(1)	A motion to dismiss based on a lack of subject matter jurisdiction is functionally equivalent to a plea to the jurisdiction challenging the trial court's authority to determine the subject matter of a cause of action.	A motion to dismiss based on a lack of subject matter jurisdiction is functionally equivalent to a plea to the jurisdiction challenging the trial court's authority to determine the subject matter of a cause of action.	Is a motion to dismiss based on a lack of subject matter jurisdiction functionally equivalent to a plea to the jurisdiction challenging the trial court's authority to determine the subject matter of a cause of action?	Perital Procedure - Memo if 6031 - C - NS.docx	R05S-00329533-AC05S-00329534	Condensed_SA	0.82	0	1	0	1	1
			A motion to dismiss based on a lack of subject matter jurisdiction is functionally equivalent to a plea to the jurisdiction challenging the trial court's authority to determine the subject matter of a cause of action.	A motion to dismiss based on a lack of subject matter jurisdiction is functionally equivalent to a plea to the jurisdiction challenging the trial court's authority to determine the subject matter of a cause of action.	Is a motion to dismiss based on a lack of subject matter jurisdiction functionally equivalent to a plea to the jurisdiction challenging the trial court's authority to determine the subject matter of a cause of action?	Perital Procedure - Memo if 6031 - C - NS.docx	R05S-00329533-AC05S-00329534	Condensed_SA	0.82	0	1	0	1	1
1339	Wilkinson v. Howell Contrs., 163 Ohio App. 3d 38	307A-554	When ruling on a motion to dismiss for lack of subject matter jurisdiction, the trial court must determine whether the plaintiff has alleged any cause of action that the trial court has authority to decide. Rules Civ.Proc., rule 12(B)(1).	When ruling on a motion to dismiss for lack of subject matter jurisdiction, the trial court must determine whether the plaintiff has alleged any cause of action that the trial court has authority to decide. Rules Civ.Proc., rule 12(B)(1).	"When ruling on a motion to dismiss for lack of subject matter jurisdiction, must the trial court determine whether the plaintiff has alleged any cause of action that the trial court has authority to decide?"	033415.docx	LEGALCASE-00141634-LEGALCASE-00141635	SA, Sub	0.73	0	0	1	1	1
			When ruling on a motion to dismiss for lack of subject matter jurisdiction, the trial court must determine whether the plaintiff has alleged any cause of action that the trial court has authority to decide. Rules Civ.Proc., rule 12(B)(1).	When ruling on a motion to dismiss for lack of subject matter jurisdiction, the trial court must determine whether the plaintiff has alleged any cause of action that the trial court has authority to decide. Rules Civ.Proc., rule 12(B)(1).	"When ruling on a motion to dismiss for lack of subject matter jurisdiction, must the trial court determine whether the plaintiff has alleged any cause of action that the trial court has authority to decide?"	033415.docx	LEGALCASE-00141634-LEGALCASE-00141635	SA, Sub	0.73	0	0	1	1	1
1340	Brookfield Mch. v. Calbert Design, 929 F. Supp. 491	1370B-2792	When challenged by defendant, the plaintiff bears the burden of proving the existence of personal jurisdiction. See Foster/Miller, Inc. v. Babcock & Wilcox Canada, 46 F.3d 138, 145 (1st Cir.1995). In considering defendant's motion, this Court employs the prima facie standard, under which the Court considers whether the plaintiffs have proffered evidence that, "if credited, is enough to support findings of all facts essential to personal jurisdiction." <i>Bot v. Gar-Tec Products, Inc.</i> , 967 F.2d 971, 975 (5th Cir.1992). The Court does not act as factfinder, but instead accepts properly supported proffers of evidence by a plaintiff as true." <i>Bot</i> , 967 F.2d at 975.	In considering defendant's motion to dismiss for lack of personal jurisdiction, court employs prima facie standard, under which court considers whether plaintiffs have proffered evidence that, if credited, is enough to support findings of all facts essential to personal jurisdiction; when determining whether prima facie showing has been made, court does not act as fact finder, but instead accepts properly supported proffers of evidence by plaintiff as true.	"Under the prima facie standard, is it an enquiry whether the plaintiff has proffered evidence which, if credited, sufficiently support findings of all facts essential to personal jurisdiction?"	033014.docx	LEGALCASE-00143138-LEGALCASE-00143139	SA, Sub	0.37	0	0	1	1	1
			When challenged by defendant, the plaintiff bears the burden of proving the existence of personal jurisdiction. See Foster/Miller, Inc. v. Babcock & Wilcox Canada, 46 F.3d 138, 145 (1st Cir.1995). In considering defendant's motion, this Court employs the prima facie standard, under which the Court considers whether the plaintiffs have proffered evidence that, "if credited, is enough to support findings of all facts essential to personal jurisdiction." <i>Bot v. Gar-Tec Products, Inc.</i> , 967 F.2d 971, 975 (5th Cir.1992). The Court does not act as factfinder, but instead accepts properly supported proffers of evidence by a plaintiff as true." <i>Bot</i> , 967 F.2d at 975.	In considering defendant's motion to dismiss for lack of personal jurisdiction, court employs prima facie standard, under which court considers whether plaintiffs have proffered evidence that, if credited, is enough to support findings of all facts essential to personal jurisdiction; when determining whether prima facie showing has been made, court does not act as fact finder, but instead accepts properly supported proffers of evidence by plaintiff as true.	"Under the prima facie standard, is it an enquiry whether the plaintiff has proffered evidence which, if credited, sufficiently support findings of all facts essential to personal jurisdiction?"	033014.docx	LEGALCASE-00143138-LEGALCASE-00143139	SA, Sub	0.37	0	0	1	1	1
1341	Bonner v. Peterson, 301 Ga. App. 443	307A-562	We review a trial court's order dismissing a plaintiff's complaint de novo. <i>Lewis v. Ga. Dept. of Human Resources</i> . Where the order of dismissal was based upon the plaintiff's failure to state a claim upon which relief could be granted (see OCGA § 9-11-12(b)(6)), we will affirm the same only if the plaintiff has failed to state a claim upon which relief could be granted. <i>Id.</i> (quoting <i>Id.</i>). The plaintiff would not be entitled to relief under any state of provable facts asserted therein... (Punctuation omitted). <i>Love v. Morehouse College</i> . A motion to dismiss asserting sovereign immunity, however, is based upon the trial court's lack of subject matter jurisdiction, rather than the merits of the plaintiff's claim. See <i>Dept. of Transp. v. Dupres</i> ; 3 OCGA § 9-11-12(b)(1). The party seeking to benefit from the waiver of sovereign immunity has the burden of proof to establish waiver, and the trial court's order of dismissal is reviewed on appeal under this any evidence rule. <i>Id.</i>	A motion to dismiss asserting sovereign immunity is based upon the trial court's lack of subject matter jurisdiction, rather than the merits of the plaintiff's claim.	Is a motion to dismiss asserting sovereign immunity based upon the trial court's lack of subject matter jurisdiction rather than the merits of the plaintiff's claim?	033016.docx	LEGALCASE-00143148-LEGALCASE-00143149	SA, Sub	0.84	0	0	1	1	1
			We review a trial court's order dismissing a plaintiff's complaint de novo. <i>Lewis v. Ga. Dept. of Human Resources</i> . Where the order of dismissal was based upon the plaintiff's failure to state a claim upon which relief could be granted (see OCGA § 9-11-12(b)(6)), we will affirm the same only if the plaintiff has failed to state a claim upon which relief could be granted. <i>Id.</i> (quoting <i>Id.</i>). The plaintiff would not be entitled to relief under any state of provable facts asserted therein... (Punctuation omitted). <i>Love v. Morehouse College</i> . A motion to dismiss asserting sovereign immunity, however, is based upon the trial court's lack of subject matter jurisdiction, rather than the merits of the plaintiff's claim. See <i>Dept. of Transp. v. Dupres</i> ; 3 OCGA § 9-11-12(b)(1). The party seeking to benefit from the waiver of sovereign immunity has the burden of proof to establish waiver, and the trial court's order of dismissal is reviewed on appeal under this any evidence rule. <i>Id.</i>	A motion to dismiss asserting sovereign immunity is based upon the trial court's lack of subject matter jurisdiction, rather than the merits of the plaintiff's claim.	Is a motion to dismiss asserting sovereign immunity based upon the trial court's lack of subject matter jurisdiction rather than the merits of the plaintiff's claim?	033016.docx	LEGALCASE-00143148-LEGALCASE-00143149	SA, Sub	0.84	0	0	1	1	1

ROW	Judicial Opinion	WKNS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences	
1542	Lake Rd. Tr. Ltd. v. ABB Powertech (Pty) Ltd., 136 Conn. App. 671	307A-554	"When a motion to dismiss for lack of personal jurisdiction raises a factual question which is not determinable from the face of the record, the burden of proof is on the plaintiff to present evidence which will establish jurisdiction." Standard Tallow Corp. v. Jowdy, supra, 190 Conn. at 54, 459 A.2d 503. "[A] determination of whether sufficient minimum contacts with Connecticut exist is a fact question.... A motion to dismiss may... raise issues of fact and would, therefore, require a... hearing [to determine the facts].... [A]ffidavits are insufficient to determine the facts unless, like the summary judgment, they disclose that no genuine issue as to a material fact exists.... When issues of fact are necessary to the determination of a court's jurisdiction, due process requires that a trial-like hearing be held, in which an opportunity is provided to present evidence and to cross-examine adverse witnesses." (Citations omitted; internal quotation marks omitted.) Id., at 56, 459 A.2d 503.	When a motion to dismiss for lack of personal jurisdiction raises a factual question which is not determinable from the face of the record, the burden of proof is on the plaintiff to present evidence which will establish jurisdiction.	"When a motion to dismiss for lack of personal jurisdiction raises a factual question which is not determinable from the face of the record, the burden of proof is on the plaintiff to present evidence which will establish jurisdiction?"	Pretrial Procedure - Memo # 5788 - C - VA.docx	ROSS-003288082-K055-003288803	SA, Sub	0.77	0	15,344	14,873	21,876	9,029	
	Verplough v. Gagliano, 336 Ill. App. 3d 1041.	307A-560	The purpose of Rule 103(b), and a primary reason for its passage, is the "prevention of intentional delay in the service of summons which would postpone service for an indefinite time after a statutory period of limitations has run." * * * Case v. Galesburg Cottage Hospital, 227 Ill.2d 207, 221-72, 316 Ill.Dec. 693, 880 N.E.2d 771, 180(2007), quoting Segal, 136 Ill.2d at 286-87, 144 Ill.Dec. 360, 555 N.E.2d at 720, quoting Karpel v. LaSalle National Bank of Chicago, 119 Ill.App.2d 157, 160, 255 N.E.2d 61 (1970). As noted by the supreme court, "[d]ismissal of a cause with prejudice under Rule 103(b) is a harsh penalty which is justified when the delay in service is of a length which denies a defendant a "fair opportunity to investigate the circumstances upon which liability against [the defendant] is predicated while the facts are accessible." * * * Segal, 136 Ill.2d at 288, 144 Ill.Dec. 360, 555 N.E.2d at 721, quoting Geneva Construction Co. v. Martin Transfer & Storage Co., 4 Ill.2d 273, 289-90, 122 N.E.2d 540, 549(1954). The trial court's determination of a plaintiff's lack of diligence is an objective one and a "fact-intensive inquiry suited to balancing, not bright line." McDonalds v. Bridgestone Americas Holding, Inc., 365 Ill. App.3d 1039, 1042, 303 Ill.Dec. 585, 851 N.E.2d 772, 775 (2006).	Purpose of Supreme Court rule allowing dismissal for lack of diligence in obtaining service of process, and a primary reason for its passage, is the prevention of intentional delay in the service of summons which would postpone service for an indefinite time after a statutory period of limitations has run. Sup.Ct.Rules, Rule 103(b).	Does the purpose of the Supreme Court rule allowing dismissal for lack of diligence in obtaining service of process is the prevention of intentional delay in the service of summons which would postpone service for an indefinite time after a statutory period of limitations has run?	LEGAL EASE-00142786-LEGAL EASE-00142787	Condensed, SA, Sub	0.75	0	1	1	1	1		
1544	Nahum v. Mansour, 109 A.D.3d 548	307A-746	To vacate their default in appearing at the scheduled court conference, the petitioners were required to demonstrate both a reasonable excuse for the failure to appear and a potentially meritorious cause of action (see CPLR § 5015 [a](1); McGovern v. Bell Air, 30 A.D.3d 369, 87 N.Y.S.2d 395; Berman v. Berman, 94 A.D.3d 644, 94 N.Y.S.2d 537; Abadi v. Hirschfeld, 71 A.D.3d 707, 888 N.Y.S.2d 441). Here, the Supreme Court providently exercised its discretion in determining that the petitioners' "law office failure" explanation for their nonappearance constituted a reasonable excuse (see CPLR § 2005; Hageman v. Home Depot U.S.A., Inc., 35 A.D.3d 760, 808 N.Y.S.2d 763; Ruppel v. Hair Plus Beauty, 288 A.D.2d 205, 733 N.Y.S.2d 495; J. Denon & Assoc. v. Jacoby & Meyers Law Offs., 256 A.D.2d 563, 682 N.Y.S.2d 872).	To vacate a default based on a failure to appear at a scheduled court conference, the defaulting party is required to demonstrate both a reasonable excuse for the failure to appear and a potentially meritorious cause of action. McKinney's CPLR § 5015(a)(1).	"To vacate a default based on a failure to appear at a scheduled court conference, is the defaulting party required to demonstrate both a reasonable excuse for the failure to appear and a potentially meritorious cause of action?"	LEGAL EASE-00142913-LEGAL EASE-00142915	Condensed, SA, Sub	0.71	0	1	1	1	1	1	
	Whitard Mem'l Hosp. v. Kerr, 846 N.E.2d 1083	413-2	Second, "the remedies provided in the Worker's Compensation Act are in derogation of common law, and a statute that is in derogation of common law must be strictly construed against limitations on a claimant's right to bring suit." McQuade v. Draw Tite, Inc., 659 N.E.2d 1016, 1018 (Ind.1995) (citation omitted). There is a strong public policy favoring the coverage of employees under the Act. GON, 744 N.E.2d at 404. "However,... this public policy is not advanced where its effect "immunit[es] third-party tortfeasors and their liability insurers from liability for negligence which results in serious injuries to one who is not in their employ." * * * Id. (quoting Nowicki, 711 N.E.2d at 544 [Kirsch, J., dissenting]).	The exclusive remedies provided in the Worker's Compensation Act are in derogation of common law, and a statute that is in derogation of common law must be strictly construed against limitations on a claimant's right to bring suit. West's A.L.C. 22-32-6.	"Are the remedies provided in the Worker's Compensation Act in derogation of common law, and must the statute be strictly construed against limitations on a claimant's right to bring suit?"	LEGAL EASE-00142682-LEGAL EASE-00142683	SA, Sub	0.65	0	0	1	1	1		
1546	Peoples Bank v. Frazer, 315 S.W.3d 121	307A-683	Peoples Bank claims that the circuit court erred in finding that Peoples Bank had the burden of proof to establish that the Oklahoma court had personal jurisdiction over Mr. Frazer. Generally, when personal jurisdiction is contested by the filing of a motion to dismiss a lawsuit, the plaintiff bears the burden of establishing that the defendant's contacts with the forum state were sufficient. State ex rel. Ramo Assocs., Inc. v. Hartenbach, 742 S.W.2d 134, 137 (Mo. banc 1987). When the challenge to personal jurisdiction arises in the context of a motion to register a foreign judgment, however, the strong presumption of the regularity of a foreign judgment that is regular on its face makes the general rule inapplicable.	Generally, when personal jurisdiction is contested by the filing of a motion to dismiss an action, the plaintiff bears the burden of establishing that the defendant's contacts with the forum state were sufficient.	"Generally, when personal jurisdiction is contested by the filing of a motion to dismiss an action, does the plaintiff bear the burden of establishing the burden of establishing that the defendant's contacts with the forum state were sufficient?"	Pretrial Procedure - Memo # 5539 - C - PB.docx	ROSS-003289566-K055-003289567	SA, Sub	0.71	0	0	1	1	1	
	Suarez v. Benham Nat. of Florida Corp., 88 So. 3d 349	307A-563	Although we review the trial court's order under an abuse of discretion standard, Leo's Gulf Liquors v. Lakhani, 802 So.2d 337 (3d DCA, 2001), we do so with the understanding that this standard is "somewhat narrowed," as it must take into account the heightened standard of "clear and convincing evidence" upon which in order of dismissal for fraud on the court must be based. See Ramsey v. Hawerty Furniture Co., 993 So.2d 404 (Fla. 2d DCA, 2008). The burden was upon Benham to establish clearly and convincingly, that a party has intentionally set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter of improper influencing the trier of fact or unfairly hampering the presentation of the opposing party's claim or defense. When reviewing a case for fraud, the court should consider the proper mix of factors and carefully balance a policy favoring adjudication on the merits with competing policies to maintain the integrity of the judicial system.	When reviewing a case for fraud on the court, the trial court should consider the proper mix of factors and carefully balance a policy favoring adjudication on the merits with competing policies to maintain the integrity of the judicial system.	"When reviewing a case for fraud on the court, should the trial court consider the proper mix of factors and carefully balance a policy favoring adjudication on the merits with competing policies to maintain the integrity of the judicial system?"	Pretrial Procedure - Memo # 6595 - C - SH.docx	ROSS-003288387-K055-003288388	SA, Sub	0.76	0	0	1	1	1	
1547															

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1548	Bartles v. Hinkle, 196 W. Va. 381	92-3954	There is also a procedural dimension. Although Rules 11, 16, and 37 of the Rules of Civil Procedure do not formally require any particular procedure, before issuing a sanction, a court must ensure it has an adequate foundation either pursuant to rules or by virtue of its inherent powers to exercise its authority, due process clause of State Constitution requires that the party seeking to impose sanctions must first establish a sufficient basis in fact for imposing such a sanction. In exercising its discretion, the court's decision is subject to review under the rightful decision of case, and thus, court must ensure that any sanction imposed is fashioned to address identified harm caused by party's misconduct. Cont. Art. 3, § 10; Rules Civ.Proc., Rules 11, 16, 37.	Although Rules of Civil Procedure do not formally require any particular procedure, before issuing a sanction, court must ensure it has adequate foundation either pursuant to rules or by virtue of its inherent powers to exercise its authority, due process clause of State Constitution requires that the party seeking to impose sanctions must first establish a sufficient basis in fact for imposing such a sanction. In exercising its discretion, the court's decision is subject to review under the rightful decision of case, and thus, court must ensure that any sanction imposed is fashioned to address identified harm caused by party's misconduct. Cont. Art. 3, § 10; Rules Civ.Proc., Rules 11, 16, 37.	Must a court ensure it has an adequate foundation either pursuant to the rules or by virtue of its inherent powers to exercise its authority?	Pretrial Procedure - Memo # 6611 - C - No.docx	ROSS-00328766-R05S-00328767	SA, Sub	0.51	839	15_344	14_073	21_876	9_029
										0	0	1		
1549	People ex rel. Schiedeman v. Frisco Mfg. Co. N.Y. LLC 93 A.D.3d 332	307A+S54	Pursuant to the New York long arm statute, "a court may exercise personal jurisdiction over any non-domiciliary... Who in person or through an agent... transacts any business within the state or contracts anywhere to supply goods or services in the state" (CPLR 302(a)(1)). "As the party seeking to assert personal jurisdiction, the plaintiff bears the burden of establishing that the defendant has sufficient contacts with the forum." 93 NY 2d 683, 687, 359 N.Y.S.2d 905, 310 N.E.2d 513, 68 A.D.3d at 332, 69 N.Y.S.2d 113).	In order to defeat motion to dismiss based upon lack of personal jurisdiction, plaintiff need only demonstrate that facts may exist to exercise personal jurisdiction over defendants?"	"In order to defeat motion to dismiss based upon lack of personal jurisdiction, need a plaintiff only demonstrate that facts may exist to exercise personal jurisdiction over defendants?"	Pretrial Procedure - Memo # 6791 - C - VA.docx	ROSS-003302847-R05S-003302849	Condensed, SA	0.81	0	1	0	1	
										0	0	1		
1550	Weirerl Sun v. Aviles, 53 So. 3d 1075	307A+S63	Trial courts have the inherent authority to dismiss an action as a sanction when it learns that plaintiff has perpetrated a fraud on the court. Morgan v. Campbell, 816 S.2d 212, 233 Fla. 2d DCA 2002). This authority exists because "illigant has a right to traffk with the courts." Aviles v. Sun, 53 So. 3d 1075, 1076 (Fla. 2d DCA 2002).	Although trial courts have the inherent authority to dismiss actions based on fraud and collusion, that power should be used "cautiously and sparingly," and only upon the most blatant showing of fraud, pretense, collusion, or other similar wrong doing.	"Should the authority to dismiss actions for fraud or collusion be used cautiously and sparingly, and only upon the most blatant showing of fraud, pretense, collusion, or other similar wrong doing?"	Pretrial Procedure - Memo # 6882 - C - PB.docx	ROSS-00328991-R05S-00328992	SA, Sub	0.63	0	0	1	1	
										0	0	1		
1551	Hale v. Cotrell, 456 S.W.3d 461	307A+S63	Fraud comes in many forms. Fraud on the court can be either intrinsic or extrinsic. Intrinsic fraud occurs when a party knowingly makes a representation to the court that is false and material for the person to rely upon. Extrinsic fraud occurs when a party knowingly makes a representation to another that is false and material for the person to rely upon it, and the person, not knowing that the representation is false, justly relies on it to the person's injury.	Fraud on the court, as could support sanction of dismissal, may occur whether a party knowingly makes a representation to the court or to another that is false and material for the person to rely upon it."	"Can fraud on the court, as could support sanction of dismissal whether a party knowingly makes a representation to the court or to another that is false and material for the person to rely upon it?"	(L)0407.d.docx	LEGALCASE-00146228-LEGALCASE-00146229	SA, Sub	0.52	0	0	1	1	
										0	0	1		
1552	Mormais v. Jordan, 870 So. 2d 177	307A+S90.1	The dispositive issue in this case is whether pleadings, notices, or orders pertaining to the withdrawal of counsel constitute record activity for the purposes of rule 1.420(e). The trial court reasoned that this activity was not sufficient to avoid dismissal because it was passive activity not called to advance the case to judgment. Mormais argue that the trial court's conclusion is erroneous because rule 1.420(e) does not place the burden of persuasion necessary to establish that no record activity occurred on the court's docket on the party seeking dismissal. However, regardless of the lack of qualifying language in the rule, the supreme court has repeatedly declared that the "record activity" required by rule 1.420(e) must be more than a mere passive effort to keep the case on the docket; the activity must constitute an affirmative act calculated to hasten the suit to judgment.	"The record activity" required to survive dismissal of an action for lack of prosecution must be more than a mere passive effort to keep the case on the docket; the activity must constitute an affirmative act calculated to hasten the suit to judgment. West's F.S.R.P. Rule 1.420(e).	"Should the "record activity" required to survive dismissal of an action for lack of prosecution be more than a mere passive effort to keep the case on the docket?"	035222.docx	LEGALCASE-00146138-LEGALCASE-00146139	Order, SA, Sub	0.66	1	0	1	1	
										0	0	1		
1553	Whelan v. Shaw, 160 Md App. 566	307A+S52	A case should not be dismissed as moot if the case presents unresolved issues in matters of important public concern that, if decided, will establish a rule for future conduct." Committee for Responsible Dev. on 25th St. v. Mayor & City Council, 137 Md.App. 60, 69, 767 A.2d 906 (2001) (quoting Stevenson v. Lanham, 137 Md.App. 597, 612, 736 A.2d 363 (1999)). The burden of persuasion necessary to establish that no record activity occurred on the court's docket is on the party seeking dismissal. However, regardless of the lack of qualifying language in the rule, the supreme court has repeatedly declared that the "record activity" required by rule 1.420(e) must be more than a mere passive effort to keep the case on the docket; the activity must constitute an affirmative act calculated to hasten the suit to judgment.	A case shouldnot be dismissed as moot if the case presents unresolved issues in matters of important public concern that, if decided, will establish a rule for future conduct, or the issue presented is capable of resolution, yet evading review." Committee for Responsible Dev. on 25th St. v. Mayor & City Council, 137 Md.App. 60, 69, 767 A.2d 906 (2001) (quoting Stevenson v. Lanham, 137 Md.App. 597, 612, 736 A.2d 363 (1999)). The burden of persuasion necessary to establish that no record activity occurred on the court's docket is on the party seeking dismissal. However, regardless of the lack of qualifying language in the rule, the supreme court has repeatedly declared that the "record activity" required by rule 1.420(e) must be more than a mere passive effort to keep the case on the docket; the activity must constitute an affirmative act calculated to hasten the suit to judgment.	"Should a case be dismissed as moot if the case presents unresolved issues in matters of important public concern that, if decided, will establish a rule for future conduct?"	035229.docx	LEGALCASE-00145901-LEGALCASE-00145902	Condensed, SA	0.69	0	1	0	1	
										0	0	1		
1554	Michels v. Com. Pn. Bd. of Prob. & Parole, 663 A.2d 116	307A+S52	The existence of a case or controversy requires (1) legal controversies that are real and not hypothetical, (2) a legal controversy that affects individual in a concrete manner so as to provide the factual predicate for a reasoned adjudication, and (3) a legal controversy with sufficiently adverse parties so as to sharpen the issues for judicial resolution.	The existence of a case or controversy, precluding dismissal of matter as moot, requires (1) a legal controversy that affects individual in a concrete manner so as to provide the factual predicate for a reasoned adjudication, and (3) a legal controversy with sufficiently adverse parties so as to sharpen the issues for judicial resolution.	"Does the existence of a case or controversy, precluding dismissal of matter as moot, require a legal controversy that is real and not hypothetical?"	035306.docx	LEGALCASE-00146051-LEGALCASE-00146052	SA, Sub	0.14	0	0	1	1	
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1555	Cross v. Pompeo, 350 So. 2d 324	307A-563	Except in the most extreme cases, where it appears that the process of trial has been subverted, judicial inconsistencies, and even false statements, are well managed through the use of impeachment and traditional discovery sanctions and do not warrant dismissal of a complaint.	Except in the most extreme cases, where it appears that the process of trial has been subverted, judicial inconsistencies, and even false statements, are well managed through the use of impeachment and traditional discovery sanctions and do not warrant dismissal of a complaint.	"Except in the most extreme cases, are factual inconsistencies, and even false statements, well managed through the use of impeachment and traditional discovery sanctions?"	035315.docx	LEGALASE-00146216-LEGALASE-00146217	SA, Sub	0.28	0	15,344	14,873	21,876	9,079
1556	New Image Contractors v. Vill. at Mariner's Point LP, 86 Conn. App. 692	307A-552	My first address whether the appeal is moot. Our standard of review regarding mootness is well settled. Mootness is a threshold issue that implicates subject matter jurisdiction, which "imposes a duty on the court to dismiss a case if the court can no longer grant practical relief to the parties. It presents a case if the court can no longer grant practical relief to the parties."	"Mootness" is a threshold issue that implicates subject matter jurisdiction, which imposes a duty on the court to dismiss a case if the court can no longer grant practical relief to the parties. It presents a case if the court can no longer grant practical relief to the parties.	Is mootness a threshold issue that implicates subject matter jurisdiction and which imposes a duty on the court to dismiss a case if the court can no longer grant practical relief to the parties?	035316.docx	LEGALASE-00146234-LEGALASE-00146235	SA, Sub	0.68	0	0	1	1	
1557	Grades v. Zehr, 279 So. 2d 1155	307A-563	In <i>Rutz</i> , we held that except in the most extreme cases where it appears that the process of trial has been subverted, judicial inconsistencies, and even false statements, are well managed through the use of impeachment and traditional discovery sanctions and do not warrant dismissal of the entire action based on an alleged fraud upon the court.	Allegations of inconsistency, nondisclosure, and even false statements are best managed through the use of impeachment, rather than by dismissal of the entire action based on an alleged fraud upon the court.	"Are allegations of inconsistency, nondisclosure, and even false statements, well managed through the use of impeachment and traditional discovery sanctions?"	035361.docx	LEGALASE-00145989-LEGALASE-00146000	SA, Sub	0.52	0	0	1	1	
1558	Williams v. Akon Nobel Chemicals, 999 S.W.2d 836	102-22	If sanctions imposed are not just a trial court abuses its discretion. To determine whether sanctions are just, the reviewing court applies a two-prong test: the first prong requires that a direct relationship exist between the offensive conduct and the sanction imposed, and the trial court should attempt to determine if the offensive conduct is attributable to the attorney, the party, or both, and the second prong requires that the sanctions must be no more severe than necessary to satisfy legitimate purposes.	To determine whether sanctions are just, the reviewing court applies a two-prong test: the first prong requires that a direct relationship exist between the offensive conduct and the sanction imposed, and the trial court should attempt to determine if the offensive conduct is attributable to the attorney, the party, or both, and the second prong requires that the sanctions must be no more severe than necessary to satisfy legitimate purposes.	What is the test of whether a sanction imposed by a trial court is just?	Perital Procedure - Memo 7/444 - C-KG.docx	R055-00329112-R055-00329183	SA, Sub	0.21	0	0	1	1	
1559	Harris v. Vitale, 2014 IL App (1st) 123514	307A-679	A section 2-619 motion to dismiss, however, "admits the legal sufficiency of the complaint, but asserts affirmative matter outside the complaint that defeats the cause of action." <i>Kearv. Wall Mart Stores, Inc.</i> , 235 Ill.2d 351, 361, 336 Ill. Dec. 1, 919 N.E.2d 926 (2009). The court construes the pleadings and any supporting documentary evidence in the light most favorable to the nonmoving party. <i>Van Meter v. Doran Park District</i> , 207 Ill. App. 3d 259, 269, 158 Ill. Dec. 532, 799 N.E.2d 1001 (2003). Under either section 2-615 or section 2-619, a court may grant a motion to dismiss if the complaint is so defective that it is incapable of being proved or that it is contrary to law. <i>novos. Kern</i> , 235 Ill.2d at 361, 336 Ill. Dec. 1, 919 N.E.2d 926.	A motion for involuntary dismissal based upon certain defects or defenses admits the legal sufficiency of the complaint, but asserts affirmative matter outside the complaint that defeats the cause of action; the court construes the pleadings and any supporting documentary evidence in the light most favorable to the nonmoving party. <i>SH.A. 735 ILCS 5/2-619.</i>	Can a motion for involuntary dismissal assert affirmative matter outside the complaint that defeats the cause of action?	036307.docx	LEGALASE-00146682-LEGALASE-00146683	SA, Sub	0.44	0	0	1	1	
1560	Farmers' & Merchants' Nat. Bank v. Dearing, 91 U.S. 29	371-1-2005	Being such means, brought into existence for this purpose, and intended to be so employed, the States can exercise no control over them, nor in any wise affect their operation, except in so far as Congress may see proper to permit. Any thing beyond this is "an abuse, because it is the exercise of a power not granted to the States by the Constitution. The national will "The States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operation of the constitutional laws enacted by Congress to carry into execution the powers vested in the General Government." <i>Bank of the United States v. McCulloch</i> , <i>supra</i> ; <i>Weston and Others v. Charleston</i> , 2 Pet. 466; <i>Brown v. Maryland</i> , 12 Wheat. 419; <i>Dobbins v. Erie County</i> , <i>id.</i> 419.	"Do States have power by taxation to control, the operation of the constitutional laws enacted by Congress to carry into execution the powers vested in the General Government?"	"Do States have power by taxation to control, the operation of the constitutional laws enacted by Congress to carry into execution the powers vested in the General Government?"	045811.docx	LEGALASE-00146130-LEGALASE-00146131	Condensed, SA, Sub	0.66	0	1	1	1	
1561	Becklake Morris Co. v. Shawmut Bank, N.A., 418 Mass. 596	307A-563	Fraud on the court occurs where a party tampers with the fair administration of justice by deceiving "the institutions set up to protect and safeguard the public" or otherwise abusing or undermining the integrity of the judicial process. <i>Hael-Atlas Glass Co. v. Hartford-Empire Co.</i> , 322 U.S. 238, 246, 64 S.Ct. 997, 1001, 88 L.Ed. 1250 (1944). The United States Court of Appeals for the First Circuit skillfully defined the concept of fraud on the court in <i>Aoudo</i> , <i>supra</i> at 1118, as follows: "A 'fraud on the court' occurs where it can be demonstrated, clearly and convincingly, that a party has engaged in a deliberate and calculated, and unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier or unfairly hampering the presentation of the opposing party's claim or defense."	"Fraud on the court" occurs where party tampers with fair administration of justice by deceiving institutions set up to protect and safeguard public or otherwise abusing or undermining integrity of judicial process.	"Does 'fraud on the court' occur where party tampers with fair administration of justice by deceiving institutions set up to protect and safeguard the public?"	036888.docx	LEGALASE-00146752-LEGALASE-00146753	SA, Sub	0.75	0	0	1	1	

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1567	Andrews v. Marriott Int'l, 2016 L App (15) 12731	307A-561.1	The circuit court dismissed plaintiff's complaint pursuant to section 2-619(b)(9) of the Code, which permits the involuntary dismissal of a claim where the claim asserted is "barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(9) (West 2010). Affirmative matter "something in the nature of a defense which negates the cause of action completely or refutes its elements." 735 ILCS 5/2-619(a)(9). The court found that the affirmative matter inferred from the complaint, "Illinois Graphics Co. v. Nickum, 159 Ill.2d 469, 486, 203 Ill.Dc. 463, 639 N.E.2d 1282 (1994)," "unless the affirmative matter is already apparent on the face of the complaint, the defendant must support the affirmative matter with an affidavit or with some other material that could be used to support a motion for summary judgment."	Where a proposed order directed to a dispositive motion is submitted for review, a court generally retains jurisdiction over the case until the order becomes final, and in that regard, the court has "unfinished business" for purposes of a motion to dismiss for lack of prosecution.	Would a defendant's compliance with the controlling statute be an "affirmative matter" warranting dismissal of the complaint?	036222.docx	LEGALAE-00147543- LEGALAE-00147544	Condensed, SA, Sub 0.5	0	1	14,873	21,276	1	9,029
1568	Patten v. Kora Tech, 895 So. 2d 1275	307A-590.1	where a proposed order directed to a dispositive motion is submitted for review, a court must retain jurisdiction over the case until the order becomes final. See Lukowich v. Hulse & Metcalf, P.A., 671 So.2d 1383, 1384 (Fla. 3d DCA 1996). In that regard, the court has "unfinished business." However, the court's failure to enter an order, without more, may not always be sufficient to avoid dismissal for lack of prosecution.	Where a proposed order directed to a dispositive motion is submitted for review, a court generally retains jurisdiction over the case until the order becomes final, and in that regard, the court has "unfinished business" for purposes of a motion to dismiss for lack of prosecution.	Where a proposed order directed to a dispositive motion is submitted for review, does a court generally retain jurisdiction over the case until the order becomes final?	Practical Procedure Memo # 7899 - C-DA_57586.docx	R035-003278793-R035-00327894	Condensed, SA, Sub 0.34	0	1	1	1	1	1
1569	Eric Estay v. Schwartz, 2016 L App (41a) 150844	307A-561.1	In Illinois, lack of standing is an affirmative defense that must be pleaded and supported by the defendant. The court's failure to enter an order denying standing is a motion to dismiss pursuant to section 2-619(b)(9) of the Code of Civil Procedure, which permits involuntary dismissal when "the claim asserted is barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(9) (West 2014). Lack of standing qualifies as an "affirmative matter" within the meaning of section 2-619(b)(9). Scholker, 209 Ill.2d at 461, 283 Ill.Dc. 707, 808 N.E.2d at 996. In this case, although the court did not base its motion as a "motion to dismiss," it did not cite any section of the Code, we will consider it as such. Cf. Sindholm v. Kuecker, 2012 L 111445, 54, 356 Ill.Dc. 733, 962 N.E.2d 418 (considering a motion to dismiss asserting immunity as a section 2-619 motion, despite its label as a section 2-615 motion).	Lack of standing qualifies as an "affirmative matter" within the meaning of section 2-619(b)(9) of the Code of Civil Procedure, which permits involuntary dismissal when "the claim asserted is barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(9).	Would lack of standing qualify as an "affirmative matter" permitting substantial dismissal of the claim, or would the claim be barred by other affirmative matter avoiding the legal effect of or defeating the claim?	036333.docx	LEGALAE-00147616- LEGALAE-00147637	SA, Sub	0	0	1	1	1	1
1570	Republic Int. Co. v. BANCO Receivables, 383 F.3d 341	257-182(2)	"While the mere failure to assert the right to demand arbitration does not alone translate into a waiver of that right, such failure does bear on the question of prejudice, and may, along with other considerations, require a court to conclude that waiver has occurred." Id. (internal citations omitted). The failure to demand arbitration affects the burden placed upon the party opposing waiver. When a timely demand for arbitration was made, "the burden of proving waiver falls even more heavily on the shoulders of the party seeking to prove waiver." 710 F.2d at 1202. In this case, the court found that the party opposing arbitration on notice that arbitration may be forthcoming, and therefore, affords that party the opportunity to avoid compromising its position with respect to arbitrable and nonarbitrable claims." Price, 793 F.2d at 1161. In contrast, "where a party fails to demand arbitration ... and, in the meantime engages in pretrial activity inconsistent with an intent to arbitrate, the party later opposing a motion to compel arbitration may more easily show that its position has been compromised, i.e., prejudiced." Id.	Where a party fails to demand arbitration, and in the meantime engages in pretrial activity inconsistent with an intent to arbitrate, the party later opposing a motion to compel arbitration may more easily show that its position has been prejudiced.	Where a party fails to demand arbitration and engages in pretrial activity inconsistent with intent to arbitrate, can the party opposing a motion to compel arbitration show that its position has been prejudiced?	Alternative Dispute Resolution - Memo 780- RK_58113.docx	R035-003280104-R035-003280106	SA, Sub	0	0	1	1	1	1
1571	United States v. Pompey, 445 F.2d 1313	34-20 6(6)	In sum, in order to qualify for a ministerial exemption, the registrant must satisfy the following tripartite test: (1) he must show a regularity of religious preaching and teaching; (2) the ministry must be his main and primary calling, that is his vocation rather than avocation; and (3) his standing in the congregation must be recognized as that of a minister. The court found that the registrant failed to establish that he was a minister. 1987, 55 (6d) 11-33, 50 U.S.C.A. App. 55-45 (6g), 46 (6g) 11-33.	In order to qualify for a "ministerial exemption," registrant must show a regularity of religious preaching and teaching, the ministry must be his main and primary calling, that is his vocation rather than avocation, and his standing in his congregation must be recognized as that of a minister.	Does a registrant have to establish a regularity of religious preaching and teaching to qualify for a ministerial exemption?	008752.docx	LEGALAE-00148757- LEGALAE-00148759	SA, Sub	0	0	1	1	1	1
1572	McDonald v. Hanaahan, 328 Mass. 539	8-20E-56	The instrument in suit is not payable at a time certain, and, therefore, is not negotiable. G.L. (Ter.Ed.) c. 107, § 23. But it is nevertheless within G.L.(Ter.Ed.) c. 260, § 1, Commonwealth Ins. Co. v. Whitney, 1 Metc. 21, 22; Shiley v. Phelps, 6 Cush. 172, 173; Moore v. Edwards, 167 Mass. 74, 75-76, 44 N.E. 1070; Pierce v. Talbot, 213 Mass. 330, 331, 100 N.E. 553. The real question is whether the instrument is a promissory note or nothing more than a receipt or acknowledgment of the indebtedness. See Brown v. Gilman, 13 Mass. 126; Gray v. Bowdoin, 23 Pick. 282. To constitute a good promissory note, there should be deliverable from its face a written promise to pay money, yet that promise need not be expressed in any particular form of words, and it would be enough if from language used a written undertaking to pay may be fairly inferred.	To constitute a good promissory note, there should be deliverable from its face a written promise to pay money, yet that promise need not be expressed in any particular form of words, and it would be enough if from language used a written undertaking to pay may be fairly inferred.	Should a written promise which need not be expressed in any particular form of words constitute a good promissory note?	010474.docx	LEGALAE-00148733- LEGALAE-00148734	SA, Sub	0	0	1	1	1	1

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Between Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
	Reedore v. United States, 119 Fed. Cl. 1	260+1701	The test to qualify a valuable mineral deposit is not merely physical (price of an mineral), but is a prudent person test. A prudent person test is the standard by which the court must "carefully adhere to established due process, adversarial practices, and evidentiary rules when doing so."	The test to qualify a valuable mineral deposit against the United States under the Mineral Leasing Law is not merely physical (price of an mineral), but is a prudent person test. A prudent person test is the standard by which the court must "carefully adhere to established due process, adversarial practices, and evidentiary rules when doing so."	"To qualify as valuable mineral deposits, what is the prudent person test or prudent man test for discovered deposits?"	02181.docx	LEGASE-00148215- LEGASE-00148216	SA, Sub	0.59	0	1	14,873	21,876	9,079
1573														
1574	Miller v. Nims, 966 So. 2d 437	307A+563	While a court has the inherent authority to dismiss an action where a fraud has been perpetrated, that is the most severe of sanctions and the court must "carefully adhere to established due process, adversarial practices, and evidentiary rules when doing so."	While a court has the inherent authority to dismiss an action where a fraud has been perpetrated, that is the most severe of sanctions and the court must "carefully adhere to established due process, adversarial practices, and evidentiary rules when doing so."	"While a court has the inherent authority to dismiss an action where a fraud has been perpetrated, is that the most severe of sanctions and the court must carefully adhere to established due process?"	Prerail Procedure - Memo # 7102 - C - DL_57776.docx	ROSS-003280035-H055- 003280036	SA, Sub	0.57	0	0	1	1	1
1575														
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1587	Rodriguez v. McCarthy, 2015 Ohio 3032	307A+479	"A motion to dismiss a complaint for failure to state a claim upon which relief can be granted is governed by Fed. R. Civ. P. 12(b)(6). The complaint must contain sufficient facts to state a claim on which relief can be granted. The facts must be taken as true, and the complaint must be construed in the light most favorable to the plaintiff, presuming all of the factual allegations in the complaint as true, and make all reasonable inferences in favor of the plaintiff. Id., citing Mitchell v. Lawson Milk Co., 40 Ohio St.3d 150, 192, 532 N.E.2d 753 (1988). A motion to dismiss under Civ.R. 12(b)(6) should be granted only where the complaint, so construed, demonstrates that plaintiff can prove no set of facts entitling him to relief. Id.	In deciding on a motion to dismiss for failure to state a claim upon which relief can be granted, a court must construe the complaint in the light most favorable to the plaintiff, presuming all of the factual allegations in the complaint as true, and make all reasonable inferences in favor of the plaintiff. Rules Civ. Proc., Rule 12(b)(6).	"In analyzing the legal sufficiency of a complaint when deciding a motion to dismiss for failure to state a claim, should a court presume that all factual allegations in the complaint are true?"	037230.docx	LEGALASE-00151092-LEGALASE-00151093	Condensed SA, Sub	0.54	0	1	14,873	21,876	9,079
1588	Inst. for Bus. Planning v. Standard Life & Acc. Ins. Co., 242 F. Supp. 100	308+99	With reference to the matter of <i>Weller</i> possessing apparent authority from defendant to execute said purchase orders, the application of such doctrine depends upon the principal knowingly permitting the agent to exercise such authority or the principal holding out the agent as possessing such authority. See 3 Am. Jur. 2d Section 73, Agency, page 475. In order to establish that an agent had the apparent authority to do the acts in question, the principal must have intended, by its acts or omissions, (1) that the principal has manifested its intention that such authority or has knowingly permitted the agent to assume the exercise of such authority, (2) that the third person knew of the facts and acting in good faith, has reason to believe, and did actually believe that the agent possessed such authority, and (3) that the third person, relying on such appearance of authority, has changed his position and will be injured or suffer loss if the act or acts done by the agent does not bind the principal. See 3 Am. Jur. 2d, Section 75, Agency, pages 477, 478.	To establish that agent had apparent authority to do act, principal must have manifested its consent to exercise of such authority or have knowingly permitted agent to exercise such authority, third person must actually believe that agent possessed such authority, and third person relying on appearance of authority must change his position and be injured or suffer loss.	To establish apparent authority should a principal manifest his consent to exercise that authority?	Principal and Agent - Memo 173 - KC_59455.docx	RCS5-00324517-AC055-003955198	Condensed SA, Sub	0.59	0	1	1	1	1
1589	Swenson v. Sanborn City Farmers Union Oil Co., 594 N.W.2d 339	307A+581	Finally, dismissal of the cause of action for failure to prosecute should be granted when, after considering all the facts and circumstances of the case, the plaintiff can be charged with lack of due diligence in failing to proceed with reasonable promptitude. <i>Opp. 458 N.W.2d at 1366; Holmoe, 403 N.W.2d at 31-32; Duncan, 382 N.W.2d at 427; Bandurly, 129 N.W.2d 403 N.W.2d at 31-32; Duncan, 382 N.W.2d at 427; Bandurly, 129 N.W.2d 403 N.W.2d at 31-32.</i>	Dismissal of the cause of action for failure to prosecute should be granted when, after considering all the facts and circumstances of the case, the plaintiff can be charged with lack of due diligence in failing to proceed with reasonable promptitude.	When the plaintiff can be charged with lack of due diligence in failing to proceed with reasonable promptitude should dismissal of the cause of action for failure to prosecute be granted?	Pertrial Procedure - Memo # 8606 - C-51_59678.docx	RCS5-00324517-AC055-00380460	SA, Sub	0.32	0	0	1	1	1
1590	Rogers v. Gann, 982 So. 2d 30+3206	307A+3206	On appeal, the former husband first argues that the trial court abused its discretion by dismissing his action for lack of prosecution. Second, he argues that even if the trial court did not abuse its discretion by dismissing his action for lack of prosecution, the trial court abused its discretion by dismissing his action with prejudice instead of without prejudice. "Dismissal of an action for want of prosecution is a drastic sanction. Accordingly, Alabama appellate courts scrutinize any order terminating an action for want of prosecution and do not hesitate to set one aside when they find an abuse of discretion.	Dismissal of an action for want of prosecution is a drastic sanction; accordingly, Alabama appellate courts scrutinize any order terminating an action for want of prosecution and do not hesitate to set one aside when they find an abuse of discretion.	Do courts scrutinize any order terminating an action for want of prosecution and do they hesitate to set one aside when they find an abuse of discretion?	037441.docx	LEGALASE-00151729-LEGALASE-00151730	SA, Sub	0.75	0	0	1	1	1
1591	Garnett v. Kurlz, 207 P.3d 916	307A+479	In evaluating a motion to dismiss for failure to state a claim under C.R.C.P. 12(b)(5), the court must accept the material allegations contained in the complaint as true, and may grant the motion only if the court concludes the plaintiff is not entitled to any relief under the facts pleaded. <i>Dunlap v. Colo. Springs Cablevision, Inc.</i> , 829 P.2d 1286, 1291 [Colo. 1992].	In evaluating a motion to dismiss for failure to state a claim, the court must accept the material allegations contained in the complaint as true, and may grant the motion only if the court concludes the plaintiff is not entitled to any relief under the facts pleaded. Rules Civ. Proc., Rule 12(b)(5).	"In evaluating a motion to dismiss for failure to state a claim, should the court accept the material allegations of the complaint as true?"	Pertrial Procedure - Memo # 8605 - C-MS_59724.docx	RCS5-00324517-AC055-00395624	SA, Sub	0.19	0	0	1	1	1
1592	Mathews v. Diaz, 426 U.S. 67	24+120	The fact that all persons, aliens and citizens alike, are protected by the due process clause of the constitution for the purpose of being able to enjoy all the advantages of citizenship or, indeed, to the conclusion that all aliens must be placed in a single homogeneous legal classification. For a host of constitutional and statutory provisions rest on the premise that a legitimate distinction between citizens and aliens may justify attributes and benefits for one class not accorded to the other, and the class of aliens is itself a heterogeneous multitude of persons with a wide-ranging variety of ties to this country.	The fact that all persons, aliens and citizens alike, are protected by the due process clause of the constitution for the purpose of being able to enjoy all the advantages of citizenship or, indeed, to the conclusion that all aliens must be placed in a single homogeneous legal classification. For a host of constitutional and statutory provisions rest on the premise that a legitimate distinction between citizens and aliens may justify attributes and benefits for one class not accorded to the other, and the class of aliens is itself a heterogeneous multitude of persons with a wide-ranging variety of ties to this country.	Does the fact that aliens are protected by the Due Process Clause of the Constitution mean that all aliens are entitled to enjoy all the advantages of citizenship?	Wines, Immigration and Citizenship Memo 44_RK_60330.docx	RCS5-00324517-AC055-00397405	SA, Sub	0.47	0	0	1	1	1
1593	Feely v. D.C., 220 A.2d 325	1239+132	It is contended, however, that Section 22-121 is unconstitutional on its vague, and that both on its face and as applied, it impinges upon the exercise of free speech, free assembly, and the right to petition the government for redress of grievances. Our analysis need not be concerned with the literal wording of the statute since it has previously been construed in <i>Scott v. District of Columbia</i> , supra, as follows: "The statute as worded does not represent a threat to freedom of speech, freedom of assembly, freedom of petition, or freedom of redress of grievances. It is a statute designed to keep the public sidewalks free of unnecessary obstructions and prevent groups from congregating in such a way that a breach of peace may result." (184 A.2d at 852.)	Disorderly conduct statute does not impinge upon exercise of free speech, free assembly, and right to petition the government for redress of grievances; the statute does no more than give police the right within reasonable limitations to keep public sidewalks free of unnecessary obstructions and prevent groups from congregating in way that breach of peace may result. D.C. Code 1961, § 22-121.	"Does police have the right, within reasonable limitations, to keep the public sidewalks free of unnecessary obstructions?"	010395.docx	LEGALASE-00152059-LEGALASE-00152060	Condensed SA, Sub	0.48	0	1	1	1	1

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ROW	Judicial Opinion	WIXNS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
1599	Speren v. Lombardi, 200 S.W.3d 885	307A-679	Appellate review of a trial court's grant of a motion to dismiss is de novo. Kimler v. Bd. of Curators of Lincoln Univ., 341 S.W.3d 711, 713 ("Mo.App.MD.2011). "A motion to dismiss for failure to state a claim" solely a test of the adequacy of the plaintiff's petition." - Id. (quoting City of Lake St. Louis v. City of O'Hallon, 324 S.W.3d 756, 759 (Mo.banc 2010)). The court stated that it was not required to determine whether the facts alleged by the plaintiff met the elements of a recognized cause of action, or of a case that might be adopted in that case.	On a motion to dismiss for failure to state a claim, a court reviews a petition in an almost academic manner to determine if the facts alleged meet the elements of a recognized cause of action or of a case that might be adopted in that case.	"Does a court review the petition in an almost academic manner, to determine if the facts alleged meet the elements of a recognized cause of action, or of a case that might be adopted in that case?"	Pretial Procedure - Memo #8902 - C - US_60361.docx	ROSS-003279949-R055-003279950	SA, Sub	0.71	839	15,344	14,873	21,976	9,029
	Carvaisanos v. Kings Cy Hosp, 74 A.D.3d 716	307A-622	In considering a motion to dismiss a complaint pursuant to CPLR 3211(a)(7), the court should "accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (Leon v. Martinez, 84 N.Y.2d 683, 87 N.Y.S.2d 972, 638 N.E.2d 511). "Where evidentiary material is submitted on a CPLR 3211(a)(7) motion, it may be considered by the court, but unless the differences are material, they will not be taken into account. If the material fact is undisputed, the court will not be required to conduct a hearing or grant" (Quasada v. Global Land, Inc., 35 A.D.3d 475, 576, 826 N.Y.S.2d 667).	In considering motion to dismiss complaint for failure to state cause of action, court should accept facts as alleged in complaint as true, accord plaintiffs benefit of every possible favorable inference, and determine only whether facts as alleged fit within any cognizable legal theory. McKinney's CLR 3211(a)(7).	"When considering motion to dismiss, should a court accept facts alleged in a complaint as true?"	038599.docx	LEGALEASE-00153165-LEGALEASE-00153166	SA, Sub	0.56	0	0	1	1	
1600	Nicla v. City of Detroit, 216 Mich. App. 746	307A-624	Defendant now appeals that portion of the trial court order denying its motion for summary disposition with regard to the exemptions under 13(1)(a) and (j). We review the trial court's decision on a motion for summary disposition de novo. Babala v. Robertson, 212 Mich.App. 45, 48, 529 N.W.2d 391, 394 (1995). In reviewing a motion for summary disposition, a determination whether the opposing party has failed to state a valid defense to the claim asserted against it. Only the pleadings may be considered when the motion is brought under MCR 2.116(Q)(9). MCR 2.116(G)(5). The well-pleaded allegations are accepted as true, and the test is whether the defendant's defenses are so clearly untenable as a matter of law that no factual development could possibly deny a plaintiff's right to recovery. Lopp v. Chelveygan Area Schools, 150 Mich.App. 726, 736, 479 N.W.2d 501 (1991).	On motion for summary disposition for failure to state defense, well pleaded allegations are accepted as true, and the test is whether defendant's defenses are so clearly untenable as a matter of law that no factual development could possibly deny plaintiff's right to recovery, MCR 2.116(G)(5).	"On a motion for summary disposition for failure to state defense, are well pleaded allegations accepted as true?"	Pretial Procedure - Memo #9040 - C - MS_60446.docx	ROSS-003283312-R055-003283213	SA, Sub	0.66	0	0	1	1	
1602	RRC Ne. v. BAA Maryland, 413 Md. 638	307A-622	Consideration of the universe of "facts" pertinent to the court's analysis of the motion is limited generally to the four corners of the complaint and its incorporated supporting exhibits. If any Curran, 383 Md. at 4475, 860 A.2d at 879. The well-pleaded facts setting forth the cause of action must be pleaded with sufficient specificity; bald assertions and conclusory statements are insufficient. See, e.g., Curran v. Corr. Med. Servs., Inc., 359 Md. 238, 246, 735 A.2d 610, 615 (2000); Bobo v. State, 344 Md. 706, 708-709, 697 A.2d 1371, 1372 (1997). Upon appellate review, the trial court's decision to grant such a motion is analyzed to determine whether the court was legally correct. Sprenger, 400 Md. at 21, 926 A.2d at 250; Benson v. State, 389 Md. 615, 626, 887 A.2d 925, 931 (2005); Foretti, 351 Md. at 71, 716 A.2d at 261.	Consideration of the universe of facts pertinent to court's analysis of motion to dismiss for failure to state a claim is limited generally to the four corners of the complaint and its incorporated supporting exhibits, if any.	Is the consideration of the universe of facts pertinent to courts analysis of motion to dismiss for failure to state a claim limited generally to the four corners of the complaint and its incorporated supporting exhibits?	038258.docx	LEGALEASE-00152937-LEGALEASE-00152938	SA, Sub	0.73	0	0	1	1	
	Irene Broad St. In Sewickley Borough, 165 Pa. 475.	3712-060	In the former it was held that an assessment for plighting, building and paving a street was a tax, within the meaning of the act of April 16, 1838, exempting churches and burial grounds from taxes. In none of the cases, however, which we have had occasion to examine, are the distinction and its legitimate result so clearly and forcibly pointed out as they are in Railroad Co. v. Decatur, 147 U.S. 190, 197, 13 Atl. 293, wherein it is held that an exemption from taxation is to be taken as an exemption from the burden of ordinary taxes, and does not release from the payment of special taxes levied upon the property for local improvements, and charged upon contiguous property upon the theory that it is benefited thereby. "Taxes proper, or general taxes," says Mr. Justice Brewer, "proceed upon the theory that the existence of government is a necessity; that it cannot continue without means to pay its expenses; that if for those means it has the right to compel all citizens and property within its limits to contribute, and that for such contribution it renders no return of special benefit to any property, but only secures to each citizen the same protection and security which he would have for his person and property, and the promotion of those various schemes which have for their object the welfare of all. . . . On the other hand, special assessments or special taxes proceed upon the theory that when a local improvement enhances the value of neighboring property, that property should pay for the improvement."	Taxes proper or general laws proceed upon the theory that the existence of government is a necessity; that it cannot continue without means to pay its expenses; that if for those means it has the right to compel all citizens and property within its limits to contribute, and that for such contribution it renders no return of special benefit to any property, but only secures to each citizen the same protection and security which he would have for his person and property. . . . On the other hand, special assessments or special taxes proceed upon the theory that when a local improvement enhances the value of neighboring property that property should pay for the improvements.	What theory best governs general tax proceed upon?	046012.docx	LEGALEASE-00153301-LEGALEASE-00153302	Continued, SA, Sub	0.56	0	1	1	1	1
1603														
1604	C.R. v. Court Holding Co., 324 U.S. 331	220a-2231	On the basis of these findings, the Tax Court was justified in attributing the gain from the sale to respondent corporation. The incidence of taxation subsists upon the substance of a transaction. The tax consequences which arise from gains from a sale of property are not finally to be determined solely by the mere employment to transfer legal title. Rather, the transaction must be viewed as a whole, and each step, in the context of the entire series of steps leading up to the sale, is to be examined. As a by-product of negotiations conducted for purposes into a sale by another by using the latter as a conduit through which to pass title. To permit the true nature of a transaction to be disguised by mere formalisms, which exist solely to alter tax liabilities, would seriously impair the effective administration of the tax policies of	The tax consequences which arise from gains from a sale of property are not finally to be determined solely by means employed to transfer legal title, but, rather, the transaction must be viewed as a whole, and each step, from commencement of negotiations to consummation of sale, is relevant.	"Does the court view a property transaction as a whole and its each step, from the commencement of negotiations to the consummation of the sale, as relevant aspects?"	018318.docx	LEGALEASE-00154625-LEGALEASE-00154626	SA, Sub	0.66	0	0	1	1	

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1605	Rodder v. McCarthy, 2015-Ohio-3952	307A479	"A motion to dismiss a complaint for failure to state a claim upon which relief can be granted, pursuant to Civ.R.12(B)(6), tests the sufficiency of the complaint. It is not a motion to dismiss for failure to state a claim under Fed.R.C.P. 12(b)(6). The complaint is to be construed in the light most favorable to the plaintiff, presuming all of the factual allegations in the complaint are true, and make all reasonable inferences in favor of the plaintiff. Id., citing Mitchell v. Lawson Milk Co., 40 Ohio St.3d 150, 152, 552 N.E.2d 753 (1988). A motion to dismiss under Civ.R. 12(B)(6) should be granted only where the complaint, so construed, demonstrates that plaintiff can prove no set of facts entitling him to relief. Id.	In deciding on a motion to dismiss for failure to state a claim upon which relief can be granted, a court must construe the complaint in the light most favorable to the plaintiff, presume all of the factual allegations in the complaint are true, and make all reasonable inferences in favor of the plaintiff. Rule Civ.Proc., Rule 12(B)(6).	"In ruling on a motion to dismiss for failure to state a claim, should the court construe the complaint in the light most favorable to the plaintiff?"	038465.docx	LEGALCASE-00154386-LEGALCASE-00154387	SA, Sub	0.54	839 0	15,344 0	34,873 1	21,876 1	9,029
1606	Gray v. Schenckstadt, City Sch., Dist., 86 A.D.3d 771	307A485	When considering a motion to dismiss pursuant to C.P.R. 321(a)(7), the court must construe the pleadings liberally, accept the allegations of the complaint as true and provide the plaintiff the benefit of every possible favorable inference (see EBCI, Inc. v. Goldman, Sachs & Co., 5 N.Y.3d 11, 35, 799 N.Y.2d 170, 827 N.E.2d 610 (2005)). Griffin v. Anzov, 17 A.D.3d 341, 342, 866 N.Y.S.2d 587, 124 D.A.R. 111, 112 (2008). The court should construe the complaint in the light most favorable to the plaintiff, presuming all of the factual allegations in the complaint are true, and make all reasonable inferences in favor of the plaintiff. Id., citing Mitchell v. Lawson Milk Co., 40 Ohio St.3d 150, 152, 552 N.E.2d 753 (1988). A motion to dismiss under Civ.R. 12(B)(6) should be granted only where the complaint, so construed, demonstrates that plaintiff can prove no set of facts entitling him to relief. Id.	In deciding a motion to dismiss for failure to state a cause of action, a court may consider evidentiary material submitted by a plaintiff to remedy defects in complaint, but the court should not rely on evidence submitted by proponent of motion as a basis for dismissal unless evidence conclusively established falsity of alleged fact. McKinney v. CTR 321(a)(7).	"On motion to dismiss cause of action, can factual materials be considered to remedy defects in allegations made in complaint or petition?"	Pretorial Procedure- Memo # 5413 - C- PC.docx	LEGALCASE-00044211-LEGALCASE-00044212	SA, Sub	0.71	0 0	0 0	1 1	1 1	1
1607	Reidy v. Lowell, 117 A.D.2d 575	307A488	"Before the drastic penalty of dismissal for failure to prosecute is imposed upon a plaintiff, a balanced consideration of all relevant factors is required." (Carroll v. DeCarano, 55 A.D.2d 712, 713, 388 N.Y.S.2d 727). To be considered are the merit or lack of merit of the action, extent of the delay, prejudice or lack of prejudice to the defendants and intent or lack of intent to deliberately default or abandon the action, as well as the extent to which the plaintiff has been diligent in prosecuting the action. See, e.g., Ruppel v. Berman, 89 A.D.2d 18, 719, 333 N.Y.S.2d 341, 338, 109 Misc.2d 100, 101 (1987). Apparently found, the foregoing factors militated against denial of plaintiff's motion, except for dissatisfaction with the availability of plaintiff's trial counsel. We find that counsel's actions did not amount to willful abandonment of the action, and evidenced a good faith attempt to comply with the court's interim order. Furthermore, the prejudice accruing to defendants was financial only. As we have previously held, the court should not impose the drastic penalty of dismissal for failure to prosecute upon the attorney, personally, a penalty for his neglect. Accordingly, we reverse, and grant the motion upon the condition heretofore stated.	Drastic penalty of dismissal for failure to prosecute requires balanced consideration of all relevant factors before imposition, including merit or lack of merit of action, extent of delay, prejudice or lack of prejudice to defendants and intent or lack of intent to deliberately default or abandon action, as well as strong public policy favoring disposition on the merits.	What factors should be considered before imposition of drastic penalty of dismissal for failure to prosecute?	Pretorial Procedure- Memo # 5462 - C- SPB_05954.docx	ROSS-003294495-ROSS-003294496	SA, Sub	0.7	0 0	0 0	1 1	1 1	1
1608	Quahin v. El-Burnman, 712 S.W.2d 164	307A481	Texas state courts do not have inherent power to dismiss a suit for failure to prosecute. The Texas Rules of Civil Procedure do not authorize the court to reverse only upon a clear showing of abuse of discretion. Veterans Land Board v. Williams, 543 S.W.2d 89, 90 (Tex.1976); McCormick v. Shannon West Texas Memorial Hospital, 665 S.W.2d 573, 575 (Tex.App., Austin 1984, writ ref'd n.e.). In contemplation of a motion to dismiss for want of prosecution, a trial court may consider the entire history of a case including any past judicial decisions rendered by the court. In the instant case, the court's decision to grant summary judgment to dismiss the case even when the plaintiff states that he never intended to abandon the suit and that he is currently ready for trial. See Petroleum Refining Co. v. Medichlin, 429 S.W.2d 676, 678 (Tex. Civ.App., Eastland 1968, writ ref'd n.e.). Rolle v. Avenue Shipping Co., 414 S.W.2d 948, 953 (Tex.Civ.App., Houston 1967, writ ref'd n.e.).	Trial court may consider entire history of case, including any past lack of diligence by plaintiff, in contemplation of motion to dismiss for want of prosecution.	"Should the court consider the entire history of case, including any past lack of diligence by plaintiff, in contemplation of motion to dismiss for want of prosecution?"	038810.docx	LEGALCASE-00154091-LEGALCASE-00154092	SA, Sub	0.82	0 0	0 0	1 1	1 1	1
1609	Boorman v. Economics Laboratory, 537 F.2d 210	170A+182.1	The first issue we deal with is whether it was reversible error for the District Court to dismiss this case under Rule 41(b). As this trial judge implicitly recognized when he amended his first order of dismissal, dismissal with prejudice is such a severe sanction that it is to be used only in extreme circumstances. Flaks v. Little River Marine Construction Co., 5 Cr. 1366, 389 F.2d 865, 887, cert. denied, 392 U.S. 928, 85 S.Ct. 2287, 19 Cr. 1366, 389 F.2d 865, 887, 1968-2 C.M.A. 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417											

ROW	Judicial Opinion	WNKS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
1010	Chenango Contracting v. Hughes Associates, Landscape Architects PLLC, 128 A.D.3d 1150	307A-6485	Nonetheless, since the motion (made shortly after serving the answer and before disclosure) argued in absence of any legal viability of the alleged causes of action, Supreme Court did not enter in granting the motion as a narrow framed post-answer CPLR 3211(a)(7) ground asserted in the summary judgment motion (see David D. Siegel, Practice Commentaries, 133 N.Y.2d 127-130, 132-133, 135-136, 138-139, 141-142, 144-145, 147-148, 150-151, 153-154, 156-157, 159-160, 162-163, 165-166, 168-169, 171-172, 174-175, 177-178, 180-181, 183-184, 186-187, 189-190, 192-193, 195-196, 198-199, 201-202, 204-205, 207-208, 210-211, 213-214, 216-217, 219-220, 222-223, 225-226, 228-229, 231-232, 234-235, 237-238, 240-241, 243-244, 246-247, 249-250, 252-253, 255-256, 258-259, 261-262, 264-265, 267-268, 270-271, 273-274, 276-277, 279-280, 282-283, 285-286, 288-289, 291-292, 294-295, 297-298, 300-301, 303-304, 306-307, 309-310, 312-313, 315-316, 318-319, 321-322, 324-325, 327-328, 330-331, 333-334, 336-337, 339-340, 342-343, 345-346, 348-349, 351-352, 354-355, 357-358, 360-361, 363-364, 366-367, 369-370, 372-373, 375-376, 378-379, 381-382, 384-385, 387-388, 390-391, 393-394, 396-397, 399-400, 402-403, 405-406, 408-409, 411-412, 414-415, 417-418, 420-421, 423-424, 426-427, 429-430, 432-433, 435-436, 438-439, 441-442, 444-445, 447-448, 450-451, 453-454, 456-457, 459-460, 462-463, 465-466, 468-469, 471-472, 474-475, 477-478, 480-481, 483-484, 486-487, 489-490, 492-493, 495-496, 498-499, 501-502, 504-505, 507-508, 510-511, 513-514, 516-517, 519-520, 522-523, 525-526, 528-529, 531-532, 534-535, 537-538, 540-541, 543-544, 546-547, 549-550, 552-553, 555-556, 558-559, 561-562, 564-565, 567-568, 570-571, 573-574, 576-577, 579-580, 582-583, 585-586, 588-589, 591-592, 594-595, 597-598, 600-601, 603-604, 606-607, 609-610, 612-613, 615-616, 618-619, 621-622, 624-625, 627-628, 630-631, 633-634, 636-637, 639-640, 642-643, 645-646, 648-649, 651-652, 654-655, 657-658, 660-661, 663-664, 666-667, 669-670, 672-673, 675-676, 678-679, 681-682, 684-685, 687-688, 690-691, 693-694, 696-697, 699-700, 702-703, 705-706, 708-709, 711-712, 714-715, 717-718, 720-721, 723-724, 726-727, 729-730, 732-733, 735-736, 738-739, 741-742, 744-745, 747-748, 750-751, 753-754, 756-757, 759-760, 762-763, 765-766, 768-769, 771-772, 774-775, 777-778, 780-781, 783-784, 786-787, 789-790, 792-793, 795-796, 798-799, 801-802, 804-805, 807-808, 810-811, 813-814, 816-817, 819-820, 822-823, 825-826, 828-829, 831-832, 834-835, 837-838, 840-841, 843-844, 846-847, 849-850, 852-853, 855-856, 858-859, 861-862, 864-865, 867-868, 870-871, 873-874, 876-877, 879-880, 882-883, 885-886, 888-889, 891-892, 894-895, 897-898, 900-901, 903-904, 906-907, 909-910, 912-913, 915-916, 918-919, 921-922, 924-925, 927-928, 930-931, 933-934, 936-937, 939-940, 942-943, 945-946, 948-949, 951-952, 954-955, 957-958, 960-961, 963-964, 966-967, 969-970, 972-973, 975-976, 978-979, 981-982, 984-985, 987-988, 990-991, 993-994, 996-997, 999-1000, 1002-1003, 1005-1006, 1008-1009, 1011-1012, 1014-1015, 1017-1018, 1020-1021, 1023-1024, 1026-1027, 1029-1030, 1032-1033, 1035-1036, 1038-1039, 1041-1042, 1044-1045, 1047-1048, 1050-1051, 1053-1054, 1056-1057, 1059-1060, 1062-1063, 1065-1066, 1068-1069, 1071-1072, 1074-1075, 1077-1078, 1080-1081, 1083-1084, 1086-1087, 1089-1090, 1092-1093, 1095-1096, 1098-1099, 1101-1102, 1104-1105, 1107-1108, 1110-1111, 1113-1114, 1116-1117, 1119-1120, 1122-1123, 1125-1126, 1128-1129, 1131-1132, 1134-1135, 1137-1138, 1140-1141, 1143-1144, 1146-1147, 1149-1150, 1152-1153, 1155-1156, 1158-1159, 1161-1162, 1164-1165, 1167-1168, 1170-1171, 1173-1174, 1176-1177, 1179-1180, 1182-1183, 1185-1186, 1188-1189, 1191-1192, 1194-1195, 1197-1198, 1199-1200, 1202-1203, 1205-1206, 1208-1209, 1211-1212, 1214-1215, 1217-1218, 1220-1221, 1223-1224, 1226-1227, 1229-1230, 1232-1233, 1235-1236, 1238-1239, 1241-1242, 1244-1245, 1247-1248, 1250-1251, 1253-1254, 1256-1257, 1259-1260, 1262-1263, 1265-1266, 1268-1269, 1271-1272, 1274-1275, 1277-1278, 1280-1281, 1283-1284, 1286-1287, 1289-1290, 1292-1293, 1295-1296, 1298-1299, 1301-1302, 1304-1305, 1307-1308, 1310-1311, 1313-1314, 1316-1317, 1319-1320, 132											

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1619	Southview Co-op. Hous. Corp. v. Rent Control Bd. of Cambridge, 396 Mass. 395	371+2002	The final trait that distinguishes fees from taxes is that fees, unlike taxes, only cover the agency's reasonably anticipated costs of providing the services for which the fees are charged. In determining whether regulatory charges are fees rather than taxes, reasonable latitude must be given to the agency in fixing charges to cover its anticipated expenses. See, e.g., West 2004) (regulatory fees may be justified as part of or incidental to regulations established in the exercise of the police power. Such a fee commonly is commensurate with the reasonable expenses incident to the licensing and all that can rationally be thought to be connected therewith. The amount of the fees in such connection doubtless would not be scrutinized too curiously even if some incidental revenue were obtained. Henrick v. Maryland, 235 U.S. 610, 627 [85 S.Ct. 140], 142, 39 L.Ed. 388] [1955].") The burden of proving that a fee is a tax rests upon the taxpayer. See, e.g., Regalado v. C.J. Antebau, Municipal Corporations, Law ¶ 24-24 at 24-54 ("See where the burden of proof is upon the protestant to show the lack of any reasonable relation between the fee and the costs of regulating ...").	In determining whether regulatory charges are fees rather than taxes, reasonable latitude must be given to agency in fixing charges to cover its anticipated expenses in connection with services to be rendered.	"In determining whether regulatory charges are fees rather than taxes, should reasonable latitude be given to the agency in fixing charges to cover its anticipated expenses?"	0MSJ7.docx	LEGALCASE-00156448- LEGALCASE-00156449	SA, Sub	0.84	839 0	15_344 0	34,873 1	21,876 1	9,029
			We judge that the certified portion of the motion to dismiss was a dispositive matter. Once the defendant has shown that it bears the burden of proving that the plaintiff's claim is barred by the statute of limitations, the burden shifts to the plaintiff, and unless the plaintiff then files a counter affidavit refuting evidentiary facts in the defendant's supporting affidavit, those facts are deemed admitted. (Kotzke & 103rd Currency Exchange, 156 Ill.2d at 116, 189 Ill.Dec. at 34, 619 N.E.2d at 795.)	Once defendant meets burden of presenting affirmative matter in support of its motion to dismiss, the burden shifts to the plaintiff to prove its case. If the plaintiff fails to do so, the court will grant summary judgment in favor of the defendant. 735 ILCS 5/2-619.	"Once a defendant meets a burden of presenting affirmative matter in support of its motion to dismiss, the burden shifts to a plaintiff to file a counter affidavit to refute evidentiary facts? "	024863.docx	LEGALCASE-00156881- LEGALCASE-00156882	SA, Sub	0.45	0 0	1 0	1 1	1	
1620	Grieff v. Universal Citis. Co., 274 Ill. App. 3d 1036	307A-4693.1	Puerto has not shown that he has a clear and undispensible right to a jury trial under the Constitution. The court has jurisdiction over the subject matter of the Grieffs' claim. Therefore, the petition for the writ of mandamus is denied. However, we note: "A denial of a Rule 12(b)(2)[i.e., Allia Corp.] motion to dismiss for lack of personal jurisdiction is interlocutory and preliminary only. After such a denial, the continuation of personal jurisdiction over a defendant who appropriately persists in challenging it in the defendant's answer to the complaint and by motion for summary judgment or at trial depends on the introduction of substantial evidence to prove the plaintiff's jurisdictional allegations in the plaintiff's complaint."	A denial of a motion to dismiss for lack of personal jurisdiction is interlocutory and preliminary only. After such a denial, the continuation of personal jurisdiction over a defendant who appropriately persists in challenging it in the defendant's answer to the complaint and by motion for summary judgment or at trial depends on the introduction of substantial evidence to prove the plaintiff's jurisdictional allegations in the plaintiff's complaint."	"Is a denial of a motion to dismiss for lack of personal jurisdiction interlocutory and preliminary only?"	025163.docx	LEGALCASE-00157191- LEGALCASE-00157192	SA, Sub	0.32	0 0	0 0	1 1	1 1	
1621	In re Gen. Motors Corp., 296 S.W.3d 813	307A-531	We are unpersuaded by Landmark's argument that the district court had the power to dismiss Landmark's claims for lack of jurisdiction, but, lacking power to dismiss them for want of prosecution. Every court has power, in the absence of statutory prohibition, to dismiss a suit for want of prosecution. Bevil v. Johnson, 157 Tex. 621, 307 S.W.2d 86, 57 (1957) (quoting First Nat'l Bank v. Fox, 121 Tex. 77, 39 S.W.2d 1085, 1086 [1931]). A court's power to dismiss for want of prosecution arises from two sources: the inherent power of the court and the rules promulgated by the court's inherent power. Villarreal v. San Antonio Trade & Equip., 594 S.W.2d 628, 630 (Tex.1993). At trial court may dismiss under rule 165a when any party seeking affirmative relief fails to appear for any hearing or trial of which the party had notice or when a case is not disposed within the time standards promulgated by the supreme court. Tex.R. Civ. P. 165a(1), (2). Additionally, common law vests the trial court with inherent power, independent of the rules of procedure, to move its docket by dismissing cases that are not prosecuted with due diligence. (Tex.1980).	A trial court may dismiss for want of prosecution when any party seeking affirmative relief fails to appear for any hearing or trial of which the party had notice or when a case is not disposed within the time standards promulgated by the supreme court. Vernon's Ann.Texas Rules Civ.Proc., Rule 165a.	"Can a court dismiss for want of prosecution, when any party seeking affirmative relief fails to appear for any hearing or trial of which the party had notice?"	Practical Procedure - Memo # 10725 - C - MS_69258.docx	ROSS-00283210-R00S- 00283210	SA, Sub	0.75	0 0	0 0	1 1	1 1	
1622	Burton v. Albrore Exp., 367 Ill. App. 3d 1206	307A-486-1	Albrore's motion to dismiss was a hybrid motion seeking relief under sections 276.015 and 2.639 of the Code of Civil Procedure (Code) [735 ILCS 5/2-615, 2-639 (West 2004)]. In its motion to dismiss, Albrore stated that it moved "to dismiss this case with prejudice because the plaintiff failed to state a claim." Under the Code, a motion to dismiss pursuant to section 276.015 of the Code [735 ILCS 5/27-615 (West 2004)] attacks the sufficiency of a complaint and raise the question of whether the complaint states a claim upon which relief can be granted. Beahinger v. Page, 204 Ill.2d 363, 369, 273 Ill.Dec. 784, 789 N.E.2d 1216 (2003). A motion to dismiss pursuant to section 2-639 of the Code [735 ILCS 5/2-639 (West 2004)] admits the legal sufficiency of a plaintiff's complaint but raises defects, defenses, or other affirmative matters that appear on the complaint's face. Russell v. Kinney Contractors, Inc., 342 Ill.App.3d 666, 670, 276 Ill.Dec. 987, 795 N.E.2d 340 (2003).	A motion to dismiss based upon certain defects or defenses admits the legal sufficiency of a plaintiff's complaint but raises defects, defenses, or other affirmative matters that appear on the complaint's face or that are established by external submissions acting to defeat the complaint's allegations. 317A, 735 ILCS 5/2-615.	Will a motion to dismiss based on certain defects or defenses admit the legal sufficiency of a plaintiff's allegations?	025373.docx	LEGALCASE-00157450- LEGALCASE-00157451	SA, Sub	0.75	0 0	0 0	1 1	1 1	

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1624	Dierslein v. Dunston Affirmative, 2022 WL 1313286 App. 1313286	307A-561.1	We review de novo the trial court's dismissal of a complaint under section 2-1305. On 12/13/21, the trial court granted summary judgment for the defendant on the basis of the legal sufficiency of the complaint. But, as a defense outside the complaint that defeats it, Patrick Engineering, Inc. v. City of Naperville, 2012 IL 113148, 344 Ill. Dec. 40, 976 N.E.2d 318. Defendants' motion was specifically based on subsection (d)(9), which permits dismissal avoiding the legal effect of or defeating the claim." 735 ILCS 2-1305(d)(9) (West 2004); see also, when the defendant's motion is based on the legal sufficiency of the complaint, the trial court's decision is an "affirmative matter" must be apparent on the face of the complaint or supported by affidavits or certain other evidentiary materials. 5 H.A. 735 ILCS 5/2-619(b)(9).	Under rule permitting dismissal of a claim when the claim is barred by other affirmative matter avoiding the legal effect of or defeating the claim, the trial court's decision is an "affirmative matter" must be apparent on the face of the complaint or supported by affidavits or certain other evidentiary materials. 5 H.A. 735 ILCS 5/2-619(b)(9).	Should the affirmative matter be apparent on the face of the complaint or supported by affidavits or evidence when the claim is barred by other affirmative matter avoiding the legal effect of or defeating the claim?	025383.docx	LEGALCASE-00157530- LEGALCASE-00157531	Condensed, SA, Sub	0.76	839	15,344	14,873	21,876	9,079
1625	Vorniak v. Winans, 151 W. Va. 228	307A-699	We have recognized under the language of Rule 41(b), that where there is an involuntary dismissal, a motion to reinstate must be made within three terms of the dismissal order accompanied by a showing of good cause. As we stated in Syllabus Point 1 of Brent v. Board of Trustees of Davis & Elkins College, 173 W. Va. 36, 311 S.E.2d 153 (1988): "Under W. Va. R. Civ. P. 41(b), in order to reinstate a cause of action which has been dismissed for failure to prosecute, the plaintiff must show that he has been diligent in prosecuting the cause of action and that he has made a showing of good cause which adequately excuses his neglect in making a showing of good cause which adequately excuses his neglect in prosecution of this case."	To reinstate cause of action which has been dismissed for failure to prosecute, plaintiff must move for reinstatement within three terms of entry of dismissal order and make showing of good cause which adequately excuses his neglect in prosecution of case. Rules Civ. Proc., Rule 41(b).	To reinstate cause of action which has been dismissed for failure to prosecute, should a plaintiff move for reinstatement within three terms of an entry of a dismissal order?	025557.docx	LEGALCASE-00158060- LEGALCASE-00158061	SA, Sub	0.56	0	0	1	1	1
1626	Provetich v. Buzzell- Poudre Assoc., 342 N.H. 848	307A-481	Generally, in ruling upon a motion to dismiss, the trial court must determine whether the allegations contained in the plaintiff's pleadings sufficiently establish a basis upon which relief may be granted. Ossipee Auto Spn v. Ossipee Planning Board, 134 N.H. 401, 403, 593 A.2d 241, 242 (1991). The trial court's decision to grant summary judgment and accept all facts pled by the plaintiff as true, viewed in the light most favorable to the plaintiff, is not an error. When, however, the motion to dismiss does not challenge the sufficiency of the plaintiff's legal claim but, instead, raises certain defenses, the trial court must look beyond the plaintiff's unsubstantiated allegations and determine, based on the facts, whether the plaintiff has sufficiently demonstrated his right to claim relief. It is not necessary for the plaintiff to establish sufficient facts to show that he has met the requirements of personal jurisdiction.	When motion to dismiss does not challenge the sufficiency of the plaintiff's legal claim but, instead, raises certain defenses, the trial court must look beyond the plaintiff's unsubstantiated allegations and determine, based on the facts, whether the plaintiff has sufficiently demonstrated his right to claim relief.	How does the court determine whether plaintiff has sufficiently demonstrated his right to claim relief?	Perial Procedure - Memo # 11078 - C- SG.docx	LEGALCASE-00048366- LEGALCASE-00048366	SA, Sub	0.73	0	0	1	1	1
1627	Anthony v. Tidwell, 560 S.W.2d 908	307A-482.1	The majority of the Court of Appeals held that an affirmative defense, failure to state a claim upon which relief can be granted under T.R.C.P. 12.02(6), but may only be raised in the defendant's answer, or by subsequent motion supported by affidavits. In this Court of Appeals was in error. A complaint is subject to dismissal under rule 12.02(6) for failure to state a claim if an affirmative defense clearly and unequivocally appears on the face of the complaint. It is not necessary for the defendant to submit evidence in support of his motion when the facts on which he relies to defeat plaintiff's claim are admitted by the plaintiff in his complaint.	Complaint is subject to dismissal for failure to state claim if affirmative defense clearly and unequivocally appears on the face of the complaint? It is not necessary for defendant to submit evidence in support of motion to dismiss when facts on which he relies to defeat plaintiff's claim are admitted by plaintiff in his complaint. Rules of Civil Procedure, rule 12.02(6).	Can a complaint be subject to dismissal if an affirmative defense clearly and unequivocally appear on the face of the complaint?	Perial Procedure - DA_63757.docx	ROSS-00038309-7A055- 000383098	SA, Sub	0.5	0	0	1	1	1
1628	Prodromou v. Poulos, 202 Ill. App. 3d 1024	307A-561.1	If the only issue before the court is whether the complaint states a cause of action, then the court must "sustain the complaint unless it clearly appears that no set of facts could be proved under the pleadings which would entitle the plaintiff to some type of relief." Paine/Wetzel, 174 Ill. App. 3d at 393, 123 Ill. Dec. 833, 528 N.E.2d 538. In a motion brought by the defendant, the court must determine whether the facts constitute an affirmative defense that could defeat the plaintiff's cause of action.	In motion to dismiss, court must also consider whether defendant has brought forth facts which constitute a firmative defense that could defeat plaintiff's cause of action. 5 H.A. ch. 110, P.2-619.	Should the court consider if defendant has brought forth facts which constitute affirmative defense that could defeat plaintiff's cause of action?	039556.docx	LEGALCASE-00159236- LEGALCASE-00159237	SA, Sub	0.66	0	0	1	1	1
1629	In re Adoption of Jason K., 41 Misc. 3d 885	24+190	It has been observed that "by including restrictions on intent in the definition of some nonimmigrant classes, Congress must have meant aliens to be barred from coming to the United States was to immigrate permanently. Moreover, since a nonimmigrant is defined as one who is not intended to remain in the United States, it is also clear that Congress intended that, in the absence of an adjustment of status ... non-immigrants in restricted classes who sought to establish domicile would be deported" [Ellins, 435 U.S. at 665] 666, 98 S.Ct. 1338 [internal citation omitted]]. In that regard, 8 USC " 1227 provides that "[p]hy alien who was admitted as a nonimmigrant and who has failed to maintain the nonimmigrant status in which the alien was admitted or to which it was changed under section 1225(a)(2)(A) shall be removed from the United States, and, if such alien is deportable" (8 USC " 1227)(b)(1)(C)(i)).	"By including restrictions on intent in the definition of some nonimmigrant classes, Congress must have meant aliens to be barred from coming to the United States for their real purpose in coming to the United States was to immigrate permanently. This position and Nationality Act, 5 USC 101(p)(1), 8 U.S.C.A. 51101(b)(1)(C)(i).	"By including restrictions on intent in the definition of some nonimmigrant classes, did Congress mean to bar aliens from these classes if their real purpose in coming to the United States was to immigrate permanently?"	"Aliens, Immigration and Citizenship - Memo 111 - RC_54753.docx"	ROSS-000312214-ROSS-000312215	SA, Sub	0.67	0	0	1	1	1

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences	
1630	Arizona v. United States, 567 U.S. 387	24+490	The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens. See <i>Toll v. Moreno</i> , 458 U.S. 1, 10, 100 S.Ct. 397, 73 L.Ed.2d 156 (1982); see generally S. Legomsky & C. Reid, <i>Immigration and Refugee Law and Policy</i> 1157-132 (5th ed. 2009). This authority rests, in part, on the National Government's constitutional power to "establish a uniform Rule of Naturalization," Art. I, § 8, cl. 4, and its inherent power as sovereign to control and conduct relations with foreign nations, see <i>Toll</i> , supra, at 110, 102 S.Ct. 2977 (citing <i>United States v. Curtiss-Wright Export Corp.</i> , 299 U.S. 304, 318, 57 S.Ct. 236, 81 L.Ed. 255 (1936)).	Government of United States has broad, undoubted power over subject of immigration and the status of aliens. In part, on its constitutional power to "establish an uniform Rule of Naturalization," and its inherent power as sovereign to control and conduct relations with foreign nations. U.S.C.A. Const. Art. I, § 8, cl. 4.	Does the power of the government over the status of aliens rest on the federal government's power to control relations with foreign nations?	"Aliens, Immigration and Citizenship" - Memo 128 - RK.docx	LEGALSE-00049046-LEGALSE-00049047	SA, Sub	0.52	8390	15,3440	14,8731	21,8761	9,079	
1631	League of United Latin American Citizens v. Wilson, 908 F. Supp. 755	360+18.43	The question of whether provisions of Proposition 187 are preempted by federal law is governed by the Supreme Court's decision in <i>De Canas v. Bica</i> , 424 U.S. 351, 96 S.Ct. 933, 47 L.Ed.2d 443 (1976) (California statute prohibiting an employer from knowingly employing an alien who is not entitled to lawful residence in the United States held not preempted under federal law). In <i>De Canas</i> , the Supreme Court set forth three tests to be used in determining whether a state statute related to immigration is preempted: Pursuant to <i>De Canas</i> , if a statute fails any one of the three tests, it is preempted by federal law. Under the first test, the Court must determine whether a state statute is a "regulation of immigration." Since the "plow" to regulate immigration is unquestionably exclusively a federal power," <i>id.</i> at 354, 96 S.Ct. at 936, any state statute which regulates immigration is "constitutionally proscribed." Under the second test, even if the state law is not an impermissible regulation of immigration, it may still be preempted if there is a showing that it was "infring[ing] on the federal government's exclusive authority to control the border with federal law," with respect to the subject matter which the statute attempts to regulate. <i>Id.</i> at 357, 96 S.Ct. at 937. In other words, under the second test, a statute is preempted where Congress intended to "occupy the field" which the statute attempts to regulate. Under the third test, a state law is preempted if it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." <i>Id.</i> at 363, 424 U.S. at 364. Under the third test, a state law is preempted if it conflicts with federal law. Stated differently, a statute is preempted under the third test if it conflicts with federal law making compliance with both state and federal law impossible. <i>Michigan Gamers & Freezers v. Agricultural Marketing and Bargaining Board</i> , 467 U.S. 469, 104 S.Ct. 1261, 81 L.Ed.2d 404, 481 U.S. 583 (1984).	Even if state law related to immigration is not impermissible regulation of immigration, it may still be preempted if there is a showing that it was clear and manifest purpose of Congress to effect complete ouster of state power, including state power to promulgate laws not in conflict with federal laws with respect to subject matter which state statute attempts to regulate; statute is preempted where Congress intended to occupy the field which statute attempts to regulate.	Are state statutes relating to immigration preempted by federal law?	"Aliens, Immigration and Citizenship" - Memo 143 - RK.docx	LEGALSE-00049072-LEGALSE-00049073	SA, Sub	0.78	0	0	1	1	1	
1632	Hawkins v. Nat'l Collegiate Athletic Ass'n, 652 F. Supp. 602	76+1326(6)	Actions of National Collegiate Athletic Association, a voluntary association of public and private institutions, in imposing sanctions against university's men's basketball program, for infractions of NCAA's rules, are not preempted by federal law. The Association's process and equal protection violations, declining to follow <i>Howard University v. NCAA</i> , 510 F.2d 213 (D.C. Cir.), <i>Parish v. NCAA</i> , 506 F.2d 1028 (5th Cir.), <i>Associated Students, Inc. v. NCAA</i> , 493 F.2d 1251 (9th Cir.), <i>Buckton v. NCAA</i> , 366 F.Supp. 1152 (Dist.Mass.), <i>Jones v. NCAA</i> , 392 F.Supp. 295 (Dist.Mass.), <i>Louisiana High School Athletic Association v. St. Augustine High School</i> , 396 F.2d 224 (5th Cir.), <i>Wright v. Arkansas Activities Association</i> , 501 F.2d 25 (8th Cir.), <i>Mitchell v. Louisiana High School Athletic Association</i> , 450 F.2d 1155 (9th Cir.), U.S.C.A. Const. Amend. 14.	Can the National Collegiate Athletic Association impose sanctions against a university?	Can the National Collegiate Athletic Association impose sanctions against a university?	017122.docx	LEGALSE-00159717-LEGALSE-00159719	Confirmed SA, Sub 0		0	1	1	1	1	1
1633	Sturges v. Zeilman, 15 Misc. 3d 487	307A+697	To restore a matter to the trial calendar pursuant to CPLR § 3404, after a year has passed from it being marked off, a plaintiff must demonstrate (1) a reasonable excuse for the failure to timely restore; (2) a meritorious cause of action; (3) a lack of intent to abandon; and (4) lack or prejudice to the opposing party. <i>Basetti v. Nour</i> , 287 A.D.2d 126, 731 N.Y.S.2d 35 (3d Jd 1998), <i>N.Y.S.2d 889</i> , 731 N.Y.S.2d 355 (3d Jd 1998).	To restore a matter to the trial calendar, after a year has passed from it being marked off, a plaintiff must demonstrate: (1) a reasonable excuse for the failure to timely restore; (2) a meritorious cause of action; (3) a lack of intent to abandon; and (4) lack or prejudice to the opposing party. McKinney's CPLR 3404.	To restore a matter to the trial calendar, after a year has passed from it being marked off, what should a plaintiff demonstrate?	039762.docx	LEGALSE-00159319-LEGALSE-00159320	SA, Sub	0.44	0	0	1	1	1	
1634	Etter v. City of Napaau, 261 A.D.2d 571	307A+697	On September 20, 1994, this case was marked off the trial calendar upon agreement by the parties. One year later, pursuant to CPLR 3404, the action was deemed abandoned and automatically dismissed (see, <i>Rouser v. Scialabasi</i> , 140 A.D.2d 319, 527 N.Y.S.2d 352). By notice of motion dated January 27, 1998, the plaintiffs sought to restore the action to the calendar. Actions which are deemed abandoned and which are automatically dismissed pursuant to CPLR 3404 may not be restored to the calendar unless the plaintiff produces evidence which (1) rebuts the presumption of abandonment, (2) demonstrates the merit of the underlying cause of action, and (3) shows that the defendants have not been prejudiced. <i>McKinney v. CPLR 3404</i> .	Actions which are deemed abandoned and which are automatically dismissed may not be restored to the calendar unless the plaintiff produces evidence which (1) rebuts the presumption of abandonment, (2) demonstrates the merit of the underlying cause of action, and (3) shows that the defendants have not been prejudiced. McKinney's CPLR 3404.	Can actions which are deemed abandoned and which are automatically dismissed not be restored to the calendar unless the plaintiff produces evidence?	039805.docx	LEGALSE-00159513-LEGALSE-00159514	SA, Sub	0.59	0	0	1	1	1	

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1642	Clark v. Yarbrough, 900 S.W.2d 406	307A-459	The reinstatement provisions of Rule 155(3) apply only to dismissals for failure to appear at trial or hearing. Id. at 503. On the other hand, the party's conduct in failing to appear at trial or hearing is not a ground for dismissal. Questions of fact to be determined by the trial court in its discretion but once finding is made, rule's language is mandatory. Vernon's Ann. Texas Rules Civ. Proc., Rule 155a, subd. 3.	In reinstatement hearing, after dismissal for failure to prosecute, question of whether party's conduct was intentional or a result of conscious indifference is a question of fact to be determined by a trial court?	"After dismissal for failure to prosecute, is the question of whether a party's conduct was intentional or a result of conscious indifference a question of fact to be determined by a trial court?"	039970.docx	LEGALSE-00160821-LEGALSE-00160822	Condensed, SA, Sub	0.52	839	15,344	14,873	21,876	9,079
1643	Burton v. Hoffman, 959 S.W.2d 351	307A-457	Based on the language of the point of error, we assume that Burton is arguing that the trial court should have applied the reinstatement standard set forth in Rule 155(3) when deciding whether to reinstate the case. According to this rule, the court shall reinstate the case upon finding after a hearing that the failure of the party or his attorney was not intentional or the result of conscious indifference but was due to an oversight, mistake, inadvertence, surprise, or neglect. The rule is not retroactively applied. See Tex. R. Civ. P. 160A(3). We are inclined toward this approach. Since we previously have concluded that Burton's case was dismissed for want of prosecution due to failure to proceed, the reinstatement provision of 165A(3) pertaining to cases dismissed for failure to appear does not apply.	Rule requiring court to reinstate dismissed case upon finding after hearing that failure of party or his attorney was not intentional or result of conscious indifference but was due to accident or mistake or that failure had been otherwise reasonably explained applies only to dismissals for failure to appear at trial or other hearing and does not apply to cases dismissed for failure to proceed. Vernon's Ann. Texas Rules Civ. Proc., Rule 165a, subd. 3.	Shall a court reinstate a dismissed case upon a finding after hearing that failure of party or his attorney was not intentional or result of conscious indifference?	040043.docx	LEGALSE-00161475-LEGALSE-00161476	SA, Sub	0.44	0	0	1	1	1
1644	Vazquez v. Gomez, 7 Misc.3d 958	307A-457	Since all parties are operating under the mis-impression that CPLR § 3404 governs the reinstatement, rather than Uniform Rules of the Trial Court, the court should apply the Uniform Rules of the Trial Court's dismissal under CPLR § 3404. However, is not irrevocable. Courts have long treated CPLR § 3404 as creating a mere presumption of abandonment. See Maron v. Sachs, 10 N.Y.2d 542, 286 N.Y.S.2d 353, 181 N.E.2d 392 (1962). Even after the dismissal that occurs upon the passage of one year, the plaintiff may move to vacate the dismissal and restore the case to the calendar by demonstrating a meritorious cause of action, a reasonable excuse for the delay, a lack of prejudice to the defendant and that the plaintiff has not abandoned the action (i.e., a showing of ongoing litigation activity).	Automatic dismissal of case deemed abandoned under rule is not irrevocable, and even after the dismissal that occurs upon the passage of one year, the plaintiff may move to vacate the dismissal and restore the case to the calendar by demonstrating a meritorious cause of action, a reasonable excuse for the delay, a lack of prejudice to defendant, and the absence of intent to abandon the action. McKinney's CPLR § 3404.	"To restore a case to calendar, should a plaintiff establish a meritorious cause of action?"	Prtrial Procedure - Memo 11467 - C - NC_65593.docx	R055-00338807-R055-00338808	Condensed, SA, Sub	0.48	0	1	1	1	1
1645	Todd v. Thrifty Corp., 34 Cal. App. 4th 986	307A-457	The second portion of section 473, concerning the attorney affidavit of fault, is mandatory in nature. "When a default (or dismissal) is the attorney's fault the court must grant a timely noticed motion for relief." The only limitation is when the court finds that the default for dismissal was not the attorney's fault. The court may then deny the motion for relief. See In re Estate of Taylor, 199 Cal. App. 4th 816, 821, 14 Cal. Rptr. 2d 286, citation omitted). Thus, "[t]he court must also find that the default (or dismissal) was actually caused by the attorney's mistake, inadvertence, surprise, or neglect." (Billings v. Health Plan of America (1990) 225 Cal. App. 3d 250, 256, 275 Cal. Rptr. 80, citation omitted).	Under statute authorizing relief from judgment or dismissal, is provision concerning attorney affidavit of fault is mandatory in nature, such that when default or dismissal is attorney's fault, court must grant timely noticed motion for relief, unless court finds that default or dismissal was not the attorney's fault. If court finds that default or dismissal was not the attorney's fault, court may deny motion for relief. See In re Estate of Taylor for client West. Am. Cal. C.C.P. § 473.	"Under statute authorizing relief from judgment or dismissal, is a provision concerning attorney affidavit of fault mandatory in nature?"	040076.docx	LEGALSE-00160896-LEGALSE-00160897	Condensed, SA, Sub	0.46	0	1	1	1	1
1646	Hef v. Janessa, 226 A.D.2d 304	307A-457	A party seeking to restore a case to the trial calendar after it has been dismissed for failure to prosecute must show that its failure to prosecute was due to a reasonable excuse for the delay, the absence of an intent to abandon the matter, and the lack of prejudice to the nonmoving party in the event that the case is restored to the trial calendar. (Civello v. Grossman, 192 A.D.2d 636, 596 N.Y.S.2d 449; see also, Lee v. Chien, 213 A.D.2d 692, 623 N.Y.S.2d 927).	Party seeking to restore case to trial calendar after it has been dismissed for failure to prosecute must show that its failure to prosecute was due to a reasonable excuse for the delay, the absence of intent to abandon matter, and lack of prejudice to nonmoving party in event that case is restored to trial calendar. McKinney's CPLR § 3404.	"Should a party seeking to restore a matter to a trial calendar demonstrate a reasonable excuse for the delay, the absence of intent to abandon matter, and lack of prejudice to reasonable excuse for any delay?"	Prtrial Procedure - Memo 11506 - C - NC_65327.docx	R055-003279283-R055-003279284	SA, Sub	0.34	0	0	1	1	1
1647	S.E.C. v. Jackson, 908 F. Supp. 2d 834	170A-1838	The Federal Rules of Civil Procedure provide that "leave [to amend the complaint] shall be given when justice so requires." Fed. R. Civ. P. 15(e). The court has dismissed the complaint for failure to state a claim. "Great Plains Trust Co. v. Morgan Stanley Dean Witter & Co., 313 F.3d 303, 329 (5th Cir. 2002) [citation omitted]. The Court should generally "afford plaintiffs at least one opportunity to cure pleading deficiencies before dismissing a case, unless it is clear that the defects are incurable or the plaintiffs advise the court that they are unwilling or unable to amend in a manner that will avoid dismissal." Id.	District court should generally afford plaintiff at least one opportunity to cure pleading deficiencies before dismissing a case for failure to state a claim. The court should not dismiss a case for failure to state a claim if the court finds that the case is unwilling or unable to amend in a manner that will avoid dismissal. Fed. Rules Civ. Proc. Rule 12(b)(6), 28 U.S.C.A., Rule 15(a), 28 U.S.C. App. (2006 Ed.)	Should a court generally afford for plaintiffs at least one opportunity to cure pleading deficiencies before dismissing the case?	Prtrial Procedure - Memo 11506 - C - NC_65341.docx	R055-003282193-R055-003282192	SA, Sub	0.43	0	0	1	1	1
1648	Harper Companies v. Scott, Royce, Harris, Bryan, Barra & Jorgensen, P.A., 656 So. 2d 627	307A-450	We also agree that the trial court was correct in dismissing court one. However, we find that the trial court abused its discretion in dismissing the claims with prejudice. It is well-settled that where a party may be able to allege additional facts to support its cause of action or event to support another cause of action based on a different legal theory, dismissal with prejudice is an abuse of discretion. See generally, Knoch v. Wicks, 488 So.2d 621 (Fla. 5th DCA 1986); and, Knoch v. Wicks, 488 So.2d 621 (Fla. 5th DCA 1986). In the second amended complaint, appellants should have been given another opportunity to attempt to state a properly cognizable cause of action. We note that appellants' factual allegations sound more in abuse of process than wrongful execution" a comment we make more for the benefit of the trial judge than appellants.	When party may be able to allege additional facts to support its cause of action or even to support another cause of action based on different legal theory, dismissal with prejudice is abuse of discretion.	Can a dismissal with prejudice constitute an abuse of discretion where a party can be able to plead additional facts to support its cause of action or support another cause of action under a different legal theory?	Prtrial Procedure - Memo 11557 - C - NC_65808.docx	R055-003281880-R055-003281881	SA, Sub	0.77	0	0	1	1	1

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1609	In re Gen. Motors Corp., 236 S.W.3d 813	307A+583	We are unpersuaded by landmark argument that the district court had the power to dismiss landmark claims for lack of jurisdiction, but lacked power to dismiss them for want of prosecution. Every court has power, in the absence of statutory prohibition, to dismiss a suit for want of prosecution. Best v. Johnson, 157 Tex. 621, 307 S.W.2d 85, 87 (1957) (quoting First Nat'l Bank v. Fox, 121 Tex. 7, 39 S.W.2d 1085, 1086 (1931)). A court power to dismiss for want of prosecution arises from two sources: (1) rule 165a of the Texas Rules of Civil Procedure, and (2) the court inherent power. Villareal v. San Antonio Truck & Equip., 994 S.W.2d 626, 630 (Tex.1999). A trial court may dismiss under rule 165a when any party seeking affirmative relief fails to appear for any hearing or trial of which the party had notice or when a case is not disposed within the time standards promulgated by the supreme court. Tex. R. Civ. P. 165a (1), (2). Additionally, common law vests the trial court with inherent power, independent of the rules of procedure, to move its docket by dismissing cases that are not prosecuted with due diligence. Villareal, 994 S.W.2d at 630; Ruk v. Mayard, 603 S.W.2d 773, 776 (Tex.1980).	Common law vests the trial court with inherent power, independent of the rules of procedure, to move its docket by dismissing cases that are not prosecuted with due diligence.	"Does common law vest the trial court with inherent power, independent of the rules of procedure, to move its docket by dismissing cases that are not prosecuted with due diligence?"	Pretl Procedure - Memo 11719 - C - NE_60436.docx	ROSS-003292181-ROSS-003292182	SA, Sub	0.85	839	15,344	1	21,876	9,029
	1650	People v. Shawn, 107 P.3d 1033	3, 77E+10	In determining whether the defendant knowingly placed or attempted to place another person in fear of imminent serious bodily injury, the proper focus is on the intent and conduct of the actor, not of the victim. The prosecution need only prove the defendant was aware that his or her conduct was practically certain to cause fear. People v. Ditz, Court, 326 P.2d 567 (Colo. 1958); People v. Salvo, 969 P.2d 729 (Colo.App.1998).	What should the proper focus be on in determining whether the defendant is knowingly placed or attempted to place another person in fear of imminent serious bodily injury?	Threats, Stalking and Harassment - Memo 208 - C - UB_65508.docx	ROSS-003283020	SA, Sub	0.06	0	0	1	1	1
1651	People v. State, 933 S.W.2d 643	133H+25	To determine if a forfeiture is punitive for double jeopardy purposes, the court's inquiry is two-fold: "1) whether the legislative intended proceedings under the forfeiture statute to be criminal or civil; and (2) whether the proceedings are so punitive in fact as to persuade us that the forfeiture proceedings may not legitimately be viewed as civil in nature, despite legislative intent." Romero, 927 S.W.2d at 635 (citing Uribe, 518 U.S. at _____. 116 S.Ct. at 2447). The question of whether a forfeiture is civil or criminal therefore starts as one of statutory construction. One lot of civil or criminal forfeiture starts as one of statutory construction. One lot of civil or criminal forfeiture starts as one of statutory construction. One lot of civil or criminal forfeiture starts as one of statutory construction. One lot of civil or criminal forfeiture starts as one of statutory construction. 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ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Between Original and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
1655	Riddle v. Buncombe Cty. of Educ., 803 S.E.2d 757	307A422	A Rule 12(b)(6) motion to dismiss "tests the legal sufficiency of the complaint in ruling on such a motion. The allegations of the complaint are taken as true, and the court is to determine whether the matter of law whether the allegations state a claim for which relief may be granted." Standaack v. Standaack, 397 N.C. 181, 385, 254 S.E.2d 611, 615 (1979) (citations omitted). On appeal, "[t]he Court must conduct a de novo review of the pleadings to determine their legal sufficiency and to determine whether the trial court's ruling on the motion to dismiss was correct." Leary v. N.C. Forest Prods., Inc., 157 N.C. App. 396, 400, 580 S.E.2d 1, 4, 3rd per curiam, 357 N.C. 587, 515 E.2d 673 (2003).	A motion to dismiss for failure to state a claim tests the legal sufficiency of the complaint in ruling on such a motion. The allegations of the complaint are taken as true, and the court is to determine whether the matter of law whether the allegations state a claim for which relief may be granted.	On what basis should the court determine as a matter of law whether the allegations state a claim for which relief may be granted?	040635.docx	LEGALISE-00162390-LEGALISE-00160391	Condensed SA, Sub	0.52	839 0	15,344 1	14,873 1	21,876 1	9,079 1
1656	San Diego Gas & Elec. Co. v. San Diego City, Air Pollution Control Dist., 205 Cal. App. 3d 1132	371+2362	As stated in <i>Beaumont Investors v. Beaumont Cherry Valley Water Dist.</i> , (1985) 165 Cal.App.3d 227, 233, 211 Cal.Rptr. 567, "to show a fee is a regulatory fee and not a special tax, the government should prove (1) the estimated costs of the service or regulatory activity, and (2) the basis for determining the manner in which the costs are apportioned, so that charges allocated to a payor bear a fair or reasonable relationship to the payor's burdens on or benefits from the regulatory activity."	To show a fee is not a special tax, does the government have to prove the estimated costs of the service or regulatory activity?	"To show a fee is not a special tax, does the government have to prove the estimated costs of the service or regulatory activity?"	Taxation - Memo 1030 - C-JL_56475.docx	R055-00324783-R055-003294784	Condensed SA, Sub	0.05	0 1	1 1	1 1	1 1	1 1
1657	Wise v. Shirenek, 26 Vet. App. 517	34+101.1	This "unique" standard of proof is lower than any other in contemporary American jurisprudence and reflects "the high esteem in which our nation holds those who have served in the Armed Services." <i>Gilbert</i> , 1 Vet.App. at 54; see <i>Henderson v. Shirenek</i> , ___ U.S. ___, 131 S.Ct. 1197, 1205'06, 179 L.Ed.2d 159 (2011) (noting that "[t]he contrast between ordinary civil litigation ... and the system that Congress created for the adjudication of veterans' claims is stark and obvious. In the latter system, the government bears only an 'approximate balance of positive and negative evidence' to prove any issue material to a claim for veterans' benefits, 38 U.S.C. " 5107(b), the nation, "in recognition of our debt to our veterans," has "taken upon itself the risk of error" in awarding such benefits. <i>Id.</i> (citing <i>Santolusky v. Kramer</i> , 455 U.S. 745, 755, 102 S.Ct. 1388, 71 L.Ed.2d 999 (1982)) ("[I]n any given proceeding, the minimum standard of proof tolerated by the due process requirement reflects not only the weight of the private and public interests at stake but also the government's responsibility to bear the risk of error in its decision-making. The risk of error should be distributed between the litigants."]. Thus, "[t]he ... tradition and by statute, the benefit of the doubt belongs to the veteran." <i>Gilbert</i> , 1 Vet.App. at 54.	By requiring only an approximate balance of positive and negative evidence to prove any issue material to a claim for veterans' benefits, the nation, in recognition of its debt to veterans, has taken upon itself the risk of error in awarding such benefits. 38 U.S.C.A. 55107(b).	Does requiring only an approximate balance of positive and negative evidence necessary to prove any issue material to a claim for veterans' benefits recognize society's debt to veterans?	Armed Services - Memo 342- RC_66863.docx	R055-003292013-R055-003292014	Order, SA, Sub	0.78	1 0	1 0	1 0	1 1	1 1
1658	U.S. v. Jackson, 904 F. Supp. 118	1135H+25	Criminal and civil forfeiture proceedings, based upon the same acts, may be brought against the same defendant. See <i>United States v. Soto</i> , 540 F.3d 1203 (9th Cir. 2018), amended 546 F.3d 41 (9th Cir. 1995). But "an accused must suffer jeopardy before he can suffer double jeopardy." <i>Selfass v. United States</i> , 420 U.S. 377, 393, 95 S.Ct. 1055, 1065, 43 L.Ed.2d 265 (1975). Therefore, to attack his criminal conviction, Wong must demonstrate that jeopardy attached in the forfeiture process before his plea was accepted by the district court. See <i>United States v. Smith</i> , 922 F.2d 922, 924 (9th Cir. 1990) [jeopardy attaches in criminal action at the time guilty plea is accepted by the court].	Criminal and civil forfeiture proceedings which are based upon same acts under double jeopardy clause, petitioner bears burden of demonstrating that jeopardy attached in civil forfeiture process before he entered guilty plea in criminal action. U.S.C.A. Cont.Amend. 5.	Can criminal and civil forfeiture proceedings based on the same facts subject a defendant to double jeopardy?	01519 .docx	LEGALISE-00163812-LEGALISE-00160318	SA, Sub	0.53	0 0	0 0	1 1	1 1	1 1
1659	Conner v. Darrmas, 374 F. Supp. 504	1135H+95.1	In its most recent decision involving double jeopardy, <i>Illinois v. Somerville</i> , 1973, 410 U.S. 458, 93 S.Ct. 1066, 35 L.Ed.2d 425, the Supreme Court held that a trial judge has a broad discretion to determine what factual situations merit a mistrial and allow a defendant to be reprosecuted. In reviewing a trial court's declaration of a mistrial, the court must look at the possibility of manipulation inherent in the declaration of a mistrial, and the presence of some important countervailing interest of proper judicial administration. <i>Illinois v. Somerville</i> , supra; <i>United States ex rel. Russo</i> , Superior Court of New Jersey, Law Division, Passaic County, 3 Cr. 1973, 483 F.2d 7; <i>United States ex rel. Gibson v. Ziegler</i> , 3 Cr. 1973, 479 F.2d 773.	In reviewing trial court's declaration of mistrial, court must look at possibility of manipulation inherent in procedure complained of, alternatives available to trial judge at time, and presence of some important countervailing interest of proper judicial administration.	"In reviewing a trial court's declaration of mistrial, should a court look at a possibility of manipulation inherent in a procedure complained of?"	Double Jeopardy - Memo 439 - C-BP_67009.docx	R055-00327857-R055-003278572	SA, Sub	0.66	0 0	0 0	1 1	1 1	1 1

Appendix D

ROW	Judicial Opinion	WIKS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
1665	Shirrell v. Missouri Edison Co., 335 S.W.2d 446	307A+483	Rule 67.02 authorizes a defendant to move for dismissal of a civil action against him on account of failure on the part of the plaintiff to prosecute with due diligence. The rule is stated in <i>Eggen v. Lemay Bank & Trust Co.</i> , 386 S.W.2d 398, 399 (Mo.1965), as follows: "The general rule is that courts have inherent power, in the exercise of sound judicial discretion, to dismiss a case for failure to prosecute with due diligence, and that the action thereon will not be disturbed on appeal unless such discretion was abused."	General rule is that courts have inherent power in exercise of sound judicial discretion to dismiss a case for failure to prosecute with due diligence and action thereon will not be disturbed on appeal unless such discretion was abused.	"Do courts have the inherent power, in the exercise of sound judicial discretion, to dismiss a case for failure to prosecute with due diligence?"	041089.docx	LEGALCASE-00164761- LEGALCASE-00164762	SA, Sub	0.73	839 0	15,344 0	34,873 1	21,876 1	9,029
	Shirrell v. Missouri Edison Co., 335 S.W.2d 446	307A+483	The rule is stated in <i>Eggen v. Lemay Bank & Trust Co.</i> , 386 S.W.2d 398, 399 (Mo.1965), as follows: "The general rule is that courts have inherent power, in the exercise of sound judicial discretion, to dismiss a case for failure to prosecute with due diligence, and that the action thereon will not be disturbed on appeal unless such discretion was abused."	General rule is that courts have inherent power in exercise of sound judicial discretion to dismiss a case for failure to prosecute with due diligence and action thereon will not be disturbed on appeal unless such discretion was abused.	"Do courts have the inherent power, in the exercise of sound judicial discretion, to dismiss a case for failure to prosecute with due diligence?"	041074.docx	LEGALCASE-00164581- LEGALCASE-00164582	SA, Sub	0.72	0	0	1	1	
1666														
1667	Binner v. Limestone Cty., 129 S.W.3d 710	307A+483	A trial court may dismiss under Rule 165.04 on the "failure of any party seeking affirmative relief to appear for any hearing or trial of which the party has been duly notified, and that the action thereon will not be disturbed on appeal unless such discretion was abused."	Common law vests the trial court with the inherent power to dismiss independently of the rules of procedure when a plaintiff fails to prosecute her case with due diligence. Vernon's Ann. Laws Rules Civ. Proc., Rule 165.	Does common law vest the trial court with the inherent power to dismiss independently of the rules of procedure when a plaintiff fails to prosecute her case with due diligence?	041106.docx	LEGALCASE-00164939- LEGALCASE-00164940	SA, Sub	0.71	0	0	1	1	
	Binner v. Howard, 150 Idaho 471	133H+100.1	The Fifth Amendment of the United States Constitution provides that no person shall be "twice put in jeopardy of life or limb" for the same offense. Article 1, 13 of the Idaho Constitution provides that "[n]o person shall be twice put in jeopardy for the same offense."	When a trial court enters a judgment of acquittal based on a determination that the evidence is factually insufficient to support a charge, the prohibition against double jeopardy bars retrying that charge. U.S.C.A. Const. Amend. 5; West's U.C.A. Const. Art. 1, § 13.	"When a trial court enters a judgment of acquittal based on a determination that the evidence is factually insufficient to support a charge, does the prohibition against double jeopardy bar retrying that charge?"	015628.docx	LEGALCASE-00166112- LEGALCASE-00166113	SA, Sub	0.64	0	0	1	1	
1668														
1669	State v. Sheets, 128 Wash. App. 149	133H+95.1	Once a jury has been empaneled and sworn, jeopardy attaches. Once jeopardy has attached, the court must determine whether a retrial is barred. "A trial judge's decision to declare a mistrial without the defendant's consent after jeopardy has attached but before the jury reaches a verdict is not in every instance bar retrial." <i>U.S.C.A. Const. Amend. 5; West's RCWA Const. Art. 1, § 9.</i>	A trial judge's decision to declare a mistrial without the defendant's consent after jeopardy has attached but before the jury reaches a verdict is not in every instance bar retrial. U.S.C.A. Const. Amend. 5; West's RCWA Const. Art. 1, § 9.	Will a trial judge's decision to declare a mistrial without the defendant's consent after jeopardy has attached but before the jury reaches a verdict in every instance bar retrial?	016028.docx	LEGALCASE-00165753- LEGALCASE-00165754	SA, Sub	0.49	0	0	1	1	
	United States v. Parrish, 88 F. Supp. 2d 555	133H+100.1	Not one of the elementary principles of collateral estoppel and the analysis. When a jury acquits a defendant of a charge, the Double Jeopardy Clause prohibits the government from relitigating issues of fact necessarily decided by that acquittal in a subsequent prosecution. See <i>Able v. United States</i> , 396 U.S. 212, 213 (1969); <i>United States v. Burns</i> , 999 F.2d 1426, 1435 (4th Cir. 1993).	When a jury acquits a defendant of a charge, does the Double Jeopardy Clause prohibit the government from relitigating issues of fact necessarily decided by that acquittal in a subsequent prosecution. U.S.C.A. Const. Amend. 5.	"When a jury acquits a defendant of a charge, does the Double Jeopardy Clause prohibit the government from relitigating issues of fact necessarily decided by that acquittal in a subsequent prosecution?"	Double Jeopardy - Memo 735 - C - 58_68051.docx	ROSS-0032395-478-ROSS-003239479	SA, Sub	0.75	0	0	1	1	
1670														
1671	Washington v. Jarvis, 307 F. Supp. 2d 794	133H+97	There are certain situations, however, when a criminal defendant may be retried for the same offense without offending double jeopardy principles. <i>Dornum v. United States</i> , 372 U.S. 734, 735-36, 83 S.Ct. 1033, 1034 (1963). The defendant is entitled to a retrial if the government has "intended to" "reap" the defendant into moving for a retrial, double jeopardy principles will not bar prosecution where a criminal defendant consents to the declaration of a mistrial. <i>Kennedy</i> , 456 U.S. at 673-76, 103 S.Ct. 2083. If a criminal defendant does not consent to a mistrial, double jeopardy principles will bar a retrial unless the trial court determines that there was a "manifest necessity" for the retrial. <i>United States v. Pearce</i> , 22 U.S. (9 Wheat) 373, 380, 6 U.S. (1 Cr.) 105 (1829).	Absent judicial or prosecutorial misconduct intended to goad defendant into moving for mistrial, double jeopardy principles will not bar prosecution where criminal defendant consents to declaration of mistrial. U.S.C.A. Const. Amend. 5.	"Absent judicial or prosecutorial misconduct intended to goad defendant into moving for mistrial, will double jeopardy principles not bar prosecution where a criminal defendant consents to a declaration of mistrial?"	Double Jeopardy - Memo 764 - C - 586.docx	LEGALCASE-00055329- LEGALCASE-00055330	SA, Sub	0.69	0	0	1	1	

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1672	State v. Howes, 432 A.2d 439	135H+100.1	Moreover, the fact alone that a criminal defendant has been acquitted for insufficiency of evidence does not make the double jeopardy clause inapplicable. M.R.S.A. § 2115-A(2). This proposition was expressly stated in dictum in United States v. Jenkins, 420 U.S. 338, 365, 95 S.Ct. 1006, 1011, 43 L.Ed.2d 750 (1975), as follows: "When a case has been tried to a jury, the Double Jeopardy Clause does not prohibit an appeal by the Government providing that a retrial would not be required in the event the Government is successful in its appeal. United States v. Wilson, ante, at 344-345, 350-353 [95 S.Ct. at 1022-1023, 1026-1027]. When this Court has said that the Government may not retry a defendant of guilt but the trial court thereafter enters a judgment of acquittal, an appeal is permitted. In that situation a conclusion by an appellate court that the judgment of acquittal was improper does not require a criminal defendant to submit to a second trial; the error can be corrected on remand by the entry of a judgment on the verdict."	Fact alone that criminal defendant has been acquitted for insufficiency of evidence does not make the double jeopardy clause inapplicable. M.R.S.A. § 2115-A(2). This proposition was expressly stated in dictum in United States v. Jenkins, 420 U.S. 338, 365, 95 S.Ct. 1006, 1011, 43 L.Ed.2d 750 (1975), as follows: "When a case has been tried to a jury, the Double Jeopardy Clause does not prohibit an appeal by the Government providing that a retrial would not be required in the event the Government is successful in its appeal. United States v. Wilson, ante, at 344-345, 350-353 [95 S.Ct. at 1022-1023, 1026-1027]. When this Court has said that the Government may not retry a defendant of guilt but the trial court thereafter enters a judgment of acquittal, an appeal is permitted. In that situation a conclusion by an appellate court that the judgment of acquittal was improper does not require a criminal defendant to submit to a second trial; the error can be corrected on remand by the entry of a judgment on the verdict."	Does the fact alone that a criminal defendant has been acquitted for insufficiency of evidence not suffice to make the double jeopardy clause inapplicable?	016314.docx	LEGALSE-00165639-LEGALSE-00165640	SA, Sub	0.76	839	15,344	14,873	21,876	9,029
1673	United States v. McCullum, 721 F.3d 706	135H+7	The constitutional protection against double jeopardy comprises not only the defendant's "right to be secure in a judgment of conviction or acquittal but also his" "valued right to have his trial completed by a particular tribunal." * Arizona v. Washington, 434 U.S. 497, 503, 98 S.Ct. 824, 54 L.Ed.2d 717 (1978) (emphasis added) (quoting Wade v. Hunter, 336 U.S. 684, 685, 69 S.Ct. 834, 59 L.Ed. 974 (1949)). Although "retrial is not automatically barred when a criminal proceeding is terminated [pretrially] ... the prosecutor must shoulder the burden of justifying the retrial. This is to avoid the double jeopardy rule."	The constitutional protection against double jeopardy comprises not only the defendant's right to be secure in a judgment of conviction or acquittal but also his valued right to have his trial completed by a particular tribunal. U.S.C.A. Const. Amend. 5.	Does the constitutional protection against double jeopardy comprise not only the defendant's right to be secure in a judgment of conviction or acquittal but also his valued right to have his trial completed by a particular tribunal?	Double Jeopardy- Memo 885 - C - TJ, 67674.docx	ROSS-00248887-KO55-003298972	SA, Sub	0.6	0	0	1	1	
1674	United States v. Morse, 613 F.3d 787	135H+30	"Relevant conduct which has been considered in a prior sentencing can be a basis for subsequent prosecution without violating the double jeopardy clause so long as the earlier sentence was within the statutory or legislatively authorized punishment range." United States v. Aboud, 273 F.3d 763, 766 (8th Cir.2001). As long as the sentence previously imposed was within the authorized statutory limit for the earlier crime, the defendant's conviction and sentence are not subject to challenge and do not constitute punishment for that conduct within the meaning of the Double Jeopardy Clause. Witte v. United States, 515 U.S. 389, 398-99, 115 S.Ct. 2199, 132 L.Ed.2d 351 (1995).	Relevant conduct which has been considered in a prior sentencing can be a basis for subsequent prosecution without violating the double jeopardy clause so long as the earlier sentence was within the statutory or legislatively authorized punishment range. U.S.C.A. Const. Amend. 5.	"When can relevant conduct which has been considered in a prior sentencing, be a basis for subsequent prosecution without violating the double jeopardy clause?"	014871.docx	LEGALSE-0016682-LEGALSE-0016683	SA, Sub	0.59	0	0	1	1	
1675	Bartee v. State, 28 So. 3d 119	135H+30	The defendant was sentenced as a habitual felony offender (HFO) and a prisoner release violator (PRV) on his conviction for aggravated assault with a deadly weapon. He was sentenced to a term of thirty months in prison. Although he had been previously convicted and sentenced to a term of thirty months in prison for a similar offense, the PRV term of incarceration acts as a minimum mandatory term and, under the PRV statute, it must be less than the overall HFO sentence. See Grant v. State, 770 So.2d 695 (Fla.2000). See also Michel v. State, 935 So.2d 1228 (Fla. 5th DCA 2006) (reversing an order denying the defendant's rule 3.800(a) motion because the defendant was sentenced as an HFO and a PRV but did not receive a greater HFO term of incarceration). As such, the defendant's thirty-year sentence is improper.	Although there is no double jeopardy violation in sentencing a person both as an habitual felony offender (HFO) and a prisoner release violator (PRV) for a single conviction, the PRV statute is not subject to challenge under the PRV statute. The PRV statute is not less than the overall HFO sentence. U.S.C.A. Const. Amend. 5. West's F.S.A. § 775.082.	Is there double jeopardy violation in sentencing a person both as a habitual felony offender (HFO) and a prisoner release violator (PRV) for a single conviction?	Double Jeopardy- Memo 1146 - C - MS, 68228.docx	ROSS-00248848-KO55-003294939	SA, Sub	0.57	0	0	1	1	
1676	People v. Burton, 376 Ill. App. 3d 856	135H+100.1	We begin by stating the legal precepts pertinent to the defendant's position. It is well-settled that the government "may not put a defendant in jeopardy twice for the same offense." Arizona v. Washington, 434 U.S. 497, 503, 98 S.Ct. 824, 54 L.Ed.2d 717 (1978). Although a retrial is automatically barred when a trial ends with an acquittal or a final resolution of the merits of the charges against the accused before a final resolution of the merits of the charges against the accused, a variety of circumstances may make it necessary to discharge a jury prior to the conclusion of a trial, and because those circumstances do not always result in unfairness to the accused, the accused's "valued right to have the trial concluded by a particular tribunal is sometimes subordinate to the public interest in affording the prosecutor one full and fair opportunity to prove its case." Illinois v. Somerville, 479 U.S. 360, 369, 107 S.Ct. 1711, 63 L.Ed.2d 783 (1987).	Although a retrial is automatically barred when a trial ends with an acquittal or a conviction, the same is not true when a criminal proceeding ends before a final resolution of the merits of the charges against the accused before a final resolution of the merits of the charges against the accused is reached. U.S.C.A. Const. Amend. 5.	"Although a retrial is automatically barred when a trial ends with an acquittal or a conviction, the same is not true when a criminal proceeding ends before a final resolution of the merits of the charges against the merits of the charges against the accused is reached?"	Double Jeopardy- Memo 669 - C - RI, 68441.docx	ROSS-00279148-KO55-003279149	SA, Sub	0.76	0	0	1	1	
1677	Davis Next Friend Lashonda D.v. Monroe City Bd of Educ., 526 U.S. 629	78+1330[2]	A private damages action may lie against a school board under Title IX in cases of student-on-student harassment, but only where the funding recipient acts with deliberate indifference to known acts of harassment in its programs or activities, and only for harassment that is so severe, pervasive, and objectively offensive that it effectively bars the victim's access to education. See Davis v. Monroe County Bd. of Educ., 526 U.S. 666, 672-73, 117 S.Ct. 1888, 140 L.Ed.2d 959 (1997), 90(1)(a), as amended, 20 U.S.C.A. § 1681(a). Because Title IX was enacted pursuant to Congress' authority under the Spending Clause, private damages actions are available only where recipients of federal funding had adequate notice that they could be liable for the conduct at issue. U.S.C.A. Const. Art. I, "8, c. 1; Education Amendments of 1972," 90(1)(a), as amended, 20 U.S.C.A. "1, 681(a).	A private damages action may lie against a school board under Title IX in cases of student-on-student harassment, but only where the funding recipient acts with deliberate indifference to known acts of harassment in its programs or activities, and only for harassment that is so severe, pervasive, and objectively offensive that it effectively bars the victim's access to education. See Davis v. Monroe County Bd. of Educ., 526 U.S. 666, 672-73, 117 S.Ct. 1888, 140 L.Ed.2d 959 (1997), 90(1)(a), as amended, 20 U.S.C.A. § 1681(a).	Can school boards be liable under Title IX for sexual harassment of students?	010782.docx	LEGALSE-00167317-LEGALSE-00167318	SA, Sub	0.42	0	0	1	1	

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Between Opinion and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
1678	High v. United States, 128 A.3d 1017	3: 771+10	Appellant contends that the government failed to prove beyond a reasonable doubt that the defendant committed an ordinary trespass by driving a vehicle onto the highway. The government argues for sufficiency of evidence, we must sustain the conviction unless there is "no evidence upon which a reasonable mind could fairly conclude guilt beyond a reasonable doubt." <i>Borden v. United States</i> , 835 A.2d 532, 534 (D.C.2003) (quoting <i>Harris v. United States</i> , 668 A.2d 889, 891 (D.C.1995)) (noting appellant faces a "difficult burden" in asserting such a challenge). When the appeal is from a bench trial, we recognize that the trial court is empowered to weigh the evidence, draw reasonable inferences of fact, and resolve any conflicts in the evidence. We review the trial court's such findings only if they are "plainly wrong or without evidence to support them." <i>Watson v. United States</i> , 979 A.2d 1254, 1256 (D.C.2009) (internal quotation marks omitted) (alteration in original) (quoting <i>Milnes v. United States</i> , 618 A.2d 197, 200701 (D.C.1992)). Whether trial was by a jury or the court, on appeal this court reviews the legal sufficiency of the evidence de novo. See <i>Russell v. United States</i> , 65 A.3d 1172, 1176 (D.C.2013). To obtain a conviction of threats to do bodily harm, the government must prove that the defendant intended to cause a reasonable doubt that (1) the defendant uttered words to another person, and that (2) those words were of such a nature as to convey fear of serious bodily harm or injury to the ordinary hearer.... <i>Williams v. United States</i> , 106 A.3d 1063, 1067 (D.C.2015) (citation and internal quotation marks omitted). See note 2, <i>supra</i> .	To obtain a conviction for threats to do bodily harm, the government must prove that the defendant intended to cause a reasonable doubt that (1) the defendant uttered words to another person, and that (2) those words were of such a nature as to convey fear of serious bodily harm or injury to the ordinary hearer. D.C. Official Code, 2001 Ed. § 22-407.	What must the government prove in order to obtain a conviction for threats to do bodily harm?	Threats and Stalking - 1B, 5894E2 - C - 1B, 5894E6.docx	R055-000293931-R055-000293932	SA, Sub	0.79	839	15,344	1	21,876	9,079
1679	<i>Provenzano v. Provenzano</i> , 88 Conn. App. 217	15:74-586(1)	"A finding of adverse possession is to be made out by clear and positive proof.... Clear and convincing proof...denotes a degree of belief that lies between the belief that is required to find the truth or existence of the fact in issue in an ordinary civil action and the belief that is required to find guilt in a criminal prosecution....[The burden] is sustained if evidence induces in the mind of the trier a reasonable belief that the facts asserted are highly probably true, that the probability that they are true or exist is substantially greater than the probability that they are false or do not exist.... The burden of proof is on the party claiming adverse possession.... "Dispute the exacting standard, our scope of review is limited. Adverse possession is a question of fact, and when found by the trial court will not be reviewed by this court as a conclusion from evidential facts, unless it appears that these facts, or some of them, are legally or logically necessarily inconsistent with that conclusion." (Internal quotation marks omitted) <i>Allen v. Johnson</i> , 79 Conn.App. 740, 745, 831 A.2d 882, cert. denied, 365 Conn. 925, 101 A.3d 862 (2015), with that standard in mind, we affirm the defendant's claims.	Clear and convincing proof denotes a degree of belief that lies between the belief that is required to find the truth or existence of the fact in issue in an ordinary civil action and the belief that is required to find guilt in a criminal prosecution; the burden is sustained if evidence induces in the mind of the trier a reasonable belief that the facts asserted are highly probably true, that the probability that they are true or exist is substantially greater than the probability that they are false or do not exist.	What is the standard of proof required to claim adverse possession?	04066.docx	LEGALASE-00077254-LEGALASE-00077255	Condensed SA, Sub	0.58	0	1	1	1	1
1680	<i>Mahler v. Szucs</i> , 135 Wash. 2d 398	364+1	All of the parties have argued subrogation principles resolve the issues in these cases. Subrogation is an equitable doctrine the essential purpose of which is to provide for a proper allocation of payment responsibility. It seeks to impose ultimate responsibility for a wrong or loss on the party who is in the best position to prevent or avoid the loss. <i>See, e.g.,</i> <i>Bank Subrogation in Insurance</i> , 10 <i>Thompson and Phillips</i> § 11.564. Two law commentators have inferred this allocation rationale as stemming from "the moralistic basis of tort law as it has developed in our system." <i>Spencer L. Kimball & Don A. Davis</i> , <i>The Extension of Insurance Subrogation</i> , 60 <i>Mich. L. Rev.</i> 841, 841 (1962). "The general purpose of subrogation is to facilitate placement of the financial consequences of loss on the party primarily responsible in law for such loss." <i>Horn, supra</i> .	"Subrogation" is an equitable doctrine the essential purpose of which is to provide for a proper allocation of payment responsibility; it seeks to impose ultimate responsibility for a wrong or loss on the party who, in equity and good conscience, ought to bear it.	Does subrogation seek to impose ultimate responsibility for a wrong or loss on the party who in equity and good conscience ought to bear it?	Subrogation - Memo 227 - VS C.docx	R055-000293931-R055-000395750	Condensed SA	0.69	0	1	0	1	1
1681	<i>Hest v. Jacoby</i> , 71 Neb. 395	200+181	One whose sole fault is the permitting of young hogs of 60 to 100 pounds weight to go at large upon his own premises, so that they wander across the highway to a neighbor's corral, and in running back frighten a passer's horse, held not liable for injuries to the passer's equisage and person produced by such fright.	One who permits young hogs of about 100 pounds weight to go at large on his own premises, so that they wander across the highway to a neighbor's corral, and in running back frighten a passer's horse, is not liable for injuries to the wagon and the person, produced by such fright.	"Can one permit hogs to wander across the highway which frightens a horse, be made liable for injuries?"	10797.docx	LEGALASE-00094801-LEGALASE-00094802	Condensed SA, Sub	0.11	0	1	1	1	1
1682	<i>Gaudreau v. Mayhew</i> , 112 So. 3d 146	307A+563	Fraud on the court means that a party has sententiously set in motion some unconscionable scheme calculated to interfere with the judicial system's ability to render a fair and impartial judgment. It is not enough that the trier of fact unfairly jampering the presentation of the opposing party's claim or defense. When reviewing a case for fraud, the court should consider the proper mix of factors and carefully balance a policy favoring adjudication on the merits with competing policies to maintain the integrity of the judicial system. Because dismissal sounds the death knell of the lawsuit, courts must reserve such strong medicine for instances where the defaulting party's misconduct is correspondingly egregious.... It should be employed only in extreme circumstances.	When reviewing case for fraud on court justifying dismissal of action, court should consider proper mix of factors and carefully balance policy favoring adjudication on merits with competing policies to maintain integrity of judicial system.	"When reviewing case for fraud on a court justifying an extraordinary measure of dismissal, should a court consider a proper mix of factors and carefully balance a policy favoring adjudication?"	10045.docx	LEGALASE-00095056-LEGALASE-00095057	SA, Sub	0.71	0	0	1	1	1
1683	<i>Evens v. Empire Dist. Inc.</i> , Co., 346 S.W.3d 313	307A+561.1	It is not a defense that may be raised in a motion to dismiss." <i>Id.</i> (quoting <i>McCracken</i> , 298 S.W.3d at 791). "A pre-trial dismissal based on an affirmative defense must be granted under the standards of summary judgment." <i>Id.</i> (citing <i>Fortenberry v. Buck</i> , 307 S.W.3d 676, 679 (Mo.App. 2010)). "A pre-trial dismissal based on an affirmative defense must be granted only if the motion to dismiss is for failure to state a claim under Rule 55.2(f)(6) when it appears from the face of the petition that an affirmative defense is applicable. <i>Fortenberry</i> , 307 S.W.3d at 679 n. 2. This is the case at bar. The trial court granted Empire's motion to dismiss based on the affirmative defense that the PSD had "primary jurisdiction" over Empire and the application thereof of section 393.1060.	A pre-trial dismissal based on an affirmative defense must be granted under the standards of summary judgment; an exception exists, however, whereby a defendant may properly file a motion to dismiss for failure to state a claim when it appears from the face of the petition that an affirmative defense is applicable. <i>V.A.M.R.</i> , 35-274(6).	Is there an exception for a pre-trial dismissal to be granted based on an affirmative defense?	10177.docx	LEGALASE-00095359-LEGALASE-00095360	Condensed SA, Sub	0.56	0	1	1	1	1

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1864	Am. Petroleum Inst. v. U.S. EPA, 52 F.3d 1113	L-404+18	While EPA relies on the first sentence of section 7545(h)(1) for its broad authority to impose requirements for RFG that are "independent of and beyond" the obligation to require the greatest achievable VOC and toxics emissions reductions under the second sentence of Section 7545(h)(1)," 58 Fed.Reg. at 68,351, neither that sentence alone nor in conjunction with the rest of the section grants EPA authority to require the use of oxygenates that will not reduce, and may increase, VOC and benzene emissions from the court has held in prior cases. 498 U.S. 448 (1990), cert. denied, 504 U.S. 1045, 104 S.Ct. 1371, 81 L.Ed.2d 627 (1991). EPA cannot rely on its general authority to make rules necessary to carry out its functions when a specific statutory directive defines the relevant functions of EPA in a particular area. Also, in Natural Resources Defense Council, Inc. v. Reilly, 976 F.2d at 41, the court observed that the general grant of rulemaking power to EPA cannot trump specific portions of the CAA and that EPA cannot use the general rulemaking authority under section 7601(b)(1) as justification for adding new factors to a list of stationery specified ones. See also United States v. Bestfoods, 521 U.S. 422, 440 n.10 (1997); 508 U.S. 483, --- 113 S.Ct. 2173, 2182, 124 L.Ed.2d 440 (1998) [court must not be guided by a single sentence of a statute but must look to the provisions of the whole law and to its object and policy]. Thus, EPA cannot uncapable the first sentence of section 7545(h)(1) from the rest of the section in order to expand its authority beyond the aims and limits of the section as a whole.	Environmental Protection Agency (EPA) cannot rely on its general authority to make rules necessary to carry out its functions when specific statutory directive defines relevant functions of EPA in particular area.	Can the Environmental Protection Agency (EPA) rely on its general authority to make rules to carry out its functions when a specific statutory directive defines its relevant functions in a particular area?	004710.docx	LEGALISE--0016920- LEGALISE--00116021	SA, Sub	0.87	0	0	1	21,976	9,029
1865	Livingstone v. Greater Washington Anesthesiology & Pain Consultants, P.C., 187 Md. App. 346	30+23(2)	Maryland case law is clear regarding the procedure required to preserve for appellate review a ruling preserving evidence based on a motion in limine. In order for a party to preserve a ruling on a motion in limine which seeks to exclude the admission of evidence at trial, the party challenging the admission must object at the time the evidence is actually offered. Reed v. State, 353 Md. 628, 637, 728 A.2d 195 (1999). Accord Pretrial Pro. Memo 198 - 222. Rather, the party who made the motion to suppress the evidence must contemporaneously object at the time the evidence is introduced at trial ("").	In order for a party to preserve a ruling on a motion in limine which seeks to exclude the admission of evidence at trial, the party challenging the admission must object at the time the evidence is actually offered.	"In order for a party to preserve a ruling on a motion in limine which seeks to exclude the admission of evidence at trial, must the party challenging the admission object at the time the evidence is actually offered?"	Preltrial Procedure-- Memo # 222 - C- MA.docx	R05-003325097-A055- 003325098	Condensed SA	0.64	0	1	0	1	
1866	Low Terminal Partners v. United States, 136 Fed. Cl. 389	14B+2.1	A regulation that restricts the use of property or unduly burdens private property interests results in a regulatory, not a physical, taking. Huntington Ranch, Inc. v. United States, 525 F.3d 1370, 1378 (Fed.Cl. 2008); accord Tuffill Ranch, Inc. v. United States, 381 F.3d at 1137. In other words, a regulatory taking is one in which the government prevents the landowner from making a use of his property that would be permissible under the background principles of state and federal law. See, e.g., Forest Props., Inc. v. United States, 377 F.3d 1360, 1364 (Fed.Cl. 1999) (citing Lucas, 505 U.S. at 1034, 112 S.Ct. 2866).	A regulation that restricts the use of property or unduly burdens private property interests results in a regulatory, not a physical, taking. Huntington Ranch, Inc. v. United States, 525 F.3d at 1370, 1378 (Fed.Cl. 2008); accord Tuffill Ranch, Inc. v. United States, 381 F.3d at 1137. In other words, a regulatory taking is one in which the government prevents the landowner from making a use of his property that would be permissible under the background principles of state and federal law. See, e.g., Forest Props., Inc. v. United States, 377 F.3d 1360, 1364 (Fed.Cl. 1999) (citing Lucas, 505 U.S. at 1034, 112 S.Ct. 2866).	na regulatory taking does the government prevent the landowner from making a particular use of the property that otherwise would be permissible?	017568.docx	LEGALISE--0072585- LEGALISE--00125859	Condensed SA, Sub	0.4	0	1	1	1	
1867	Goudy v. Dayton Newspapers, 14 Ohio App. 24207	275+82	The refusal of the trial court to grant a mistrial or a continuance for the purpose of securing such documentary evidence, and the refusal of the trial court to grant a new trial for "surprise which ordinary prudence could not have guarded against," are matters which rest largely with the discretion of the trial court. We see no such abuse of discretion on the part of the trial court.	It is within discretion of a trial court to grant a mistrial or a continuance for a purpose of securing documentary evidence, or to grant a new trial for surprise which ordinary prudence could not have guarded against.	"Is it within discretion of a trial court to grant a mistrial or a continuance for purpose of securing documentary evidence, or to grant a new trial for surprise which ordinary prudence could not have guarded against?"	027465.docx	LEGALISE--0013223- LEGALISE--0013224	Condensed SA	0.45	0	1	0	1	
1868	Moy v. Ng, 341 Ill. App. 3d 984	307A+483	Where a party fails to properly respond to a request to admit facts, those factual matters in the request are deemed judicial admissions which cannot later be controverted by any contrary evidence. Robertson v. Sky Chefs, Inc., 344 Ill.App.3d 196, 199, 199 Ill.Dec. 49, 799 N.E.2d 852 (2003). Such an admission is considered incontrovertible and has the effect of withdrawing a fact from contention. Tree "N," v. Dominic Fordiges Construction Co., 331 Ill.App.3d 87, 91, 284 Ill.Dec. 566, 771 N.E.2d 1001 (1997). The Illinois Supreme Court has consistently concluded that, where a party's failure to respond to a request to admit facts constitutes a concession of law, the request is improper to inform and the opposing party's failure to respond does not result in an admission." Banco Popular v. Beneficial Systems, Inc., 135 Ill.App.3d 196, 209, 269 Ill.Dec. 389, 780 N.E.2d 1113 (2002).	Where a party fails to properly respond to a request to admit facts, those factual matters in the request are deemed judicial admissions which cannot later be controverted by any contrary evidence; such an admission is considered incontrovertible and has the effect of withdrawing a fact from contention. Sup Ct Rules Rule 216.	"Where a party fails to properly respond to a request to admit facts, will those factual matters in the request be deemed judicial admissions which cannot later be controverted by any contrary evidence? "	Preltrial Procedure-- Memo # 333 - C- SK.docx	R05-003316749-A055- 003316750	SA, Sub	0.6	0	0	1	1	
1869	State v. Schenckowski, 301 N.J. Super. 115	(63+11)	Under N.J.S.A. 2C:27-2, neither the offer nor the recipient of the bribe need be a public official to prove bribery. Rather, it is sufficient if the person created the understanding with the bribe taker that he could influence matters in connection with an official duty, whether or not he was capable of actually affecting such an act. N.J.S.A. 2C:27-2. Neither offer nor the recipient of bribe need be public official to prove bribery, and it is sufficient if recipient created understanding with offeror that he could influence matters in connection with official duty, whether or not he was capable of actually affecting such an act. N.J.S.A. 2C:27-2.	To prove bribery, is it sufficient if the recipient created the understanding with the briber that he could influence matters in connection with an official duty?	"To prove bribery, is it sufficient if the recipient created the understanding with the briber that he could influence matters in connection with an official duty?"	011127.docx	LEGALISE--00739166- LEGALISE--00139167	SA, Sub	0.73	0	0	1	1	

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1690	Colorado Interstate Gas Co. v. Sims, 362 S.W.2d 396	260+92.26	"The rule of fair chance or fair share is the reason for the 'confiscation' exception to the rule whereby owner of interest in oil and gas wells permits the use of the well for purposes other than those for which it was drilled. In the case of a well which has been accorded a fair and equal opportunity with other producers of surrounding tracts within drainage area to recover his fair share of oil in place beneath his tract." (356 S.W.2d 136)	Rule of fair chance or fair share is reason for "confiscation" exception to the rule whereby owner of interest in oil and gas wells permits the use of the well for purposes other than those for which it was drilled. In the case of a well which has been accorded a fair and equal opportunity with other producers of surrounding tracts within drainage area to recover his fair share of oil in place beneath his tract."	"Is the proper test of confiscation whether an owner, with the wells which already exist, has been accorded a fair and equal opportunity to recover his fair share of the oil in place beneath his tract?"	021241.docx	LEGALASE-00143280-LEGALOGEE-00143281	Condensed SA, Sub	0.46	839	15,344	14,873	21,876	9,079
										0	1	1	1	1
1691	Bloomington v. Lanza, 143 A.D.3d 850	109+15	"Although the ultimate burden of proof regarding personal jurisdiction rests with the plaintiff, to defeat a CPLR 3211(b)(8) motion to dismiss a complaint, the plaintiff need only make a prima facie showing that the defendant is subject to the personal jurisdiction of the court." (Whitcraft v. Ruyon, 123 A.D.3d at 812, 99 N.Y.2d 124), we find that the plaintiffs failed to make a prima facie showing that the defendants were subject to personal jurisdiction in New York.	Although the ultimate burden of proof regarding personal jurisdiction rests with the plaintiff, to defeat a motion to dismiss a complaint for lack of personal jurisdiction, the plaintiff need only make a prima facie showing that the defendant is subject to the personal jurisdiction of the court. McKinney's CPLR 3211(b)(8).	Needs plaintiff only make a prima facie showing that the defendant is subject to the personal jurisdiction of the court?	Perital Procedure - Memo # 5533 - C.docx	ROSS-0032913291-ROSS-003291330	SA, Sub	0.62	0	0	1	1	
1692	Coven v. Bank United of Texas, 558 F.3d 937	137+14579	In this matter of doubt we turn with relief to the staff of the Federal Reserve Board, which in "official staff commentary," to which the Supreme Court has emphatically told us to give great weight in interpreting the Truth-in-Lending Act and the regulations under it, Ford Motor Credit Co. v. Milhollin, 444 U.S. 555, 565-70, 100 S.Ct. 790, 796-99, 63 L.Ed.2d 1212 (1980), has decided that "a fee for courier service charged by a settlement agent to send a document to the title company is not a finance charge, and therefore is not subject to the Truth-in-Lending Act's prohibition against such charges. The agency has not required the use of a courier or retained the charge." 12 C.F.R. pt. 226, Supp. 1, § 226.40(a)(4), 60 Fed.Reg. 1,677.1, 1,677.1 (April 3, 1995) (emphasis added). This staff commentary was issued after the transaction at issue in this case, and the plaintiffs, who tell us that the commentary was issued under "pressure" from the banking community, argue that we should give it no weight at all. We think it entitled to at least some weight as an interpretation of the statute. The objection based on retroactivity is unavailing. The commentary is not a regulation, and it is not a legislative act, and the commentary in question purports to clarify rather than to change existing law. 60 Fed.Reg. at 16772; Hickey v. Great Western Mortgage Corp., 1995 WL 31,7095 (N.D.Ill. May 23, 1995) "by an agency that knows more about banking than we do and that cannot be criticized for listening to what bankers have to say."	Federal Reserve Board's "official staff commentary" that states that fee for courier service charged by settlement agent to send document to title company or some other party is not finance charge, provided that creditor has not required use of courier or retained the charge. is entitled to some weight as interpretation of statute, despite complaint that it was issued after transaction at issue in case. 12 C.F.R. pt. 226, Supp. 1 comment.	Can a fee for courier service charged by settlement agent be considered as a finance charge if the creditor has not retained the charge?	033957.docx	LEGALASE-00155162-LEGALOGEE-00155163	Condensed SA, Sub	0.7	0	1	1	1	
1693	Albert v. Gen. Land Partners, 501 F. Supp. 2d 491	13+2715)	A breach of fiduciary duty claim is barred by the gist of the action doctrine if the fiduciary duty alleged is grounded in contractual obligations. See e.g., Inc. v. Elmer/Savior Advertising, Inc., 811 A.2d 10, 19 (Pa.Super.Ct.2002). However, claims for breach of fiduciary duty and breach of contract can coexist if the fiduciary duty is based on duties imposed as a matter of social policy and if the fiduciary duty is not based on a contractual agreement between the parties. See Bohrer-Uddenhoven, 817 F.2d 79 (DCGa., 91-11-36)(n), as contrasted in Colock v. Mump, 244 Ga. 810, 812-814, 265 S.E.2d 141 (1979) (Hill, J., concurring specially and concurring in result). Whiteman v. Wells, 249 Ga. 194, 288 S.E.2d 196 (1982) (dissenting Colock special concurrence), a court may grant a motion to withdraw admissions "1) when the presentation of the merits will be subverted thereby and 2) the party obtaining the admission fails to satisfy the court that the withdrawal will prejudice maintaining his action or defense on the merits. The burden is on the first proponent of the motion to show that the withdrawal will prejudice maintaining his action or defense on the merits. As to the first prong, if the burden of proof on the subject matter of the request for admission is on the requestor, the motion is required to show the admitted request either can be refuted by admissible evidence having a medium of credibility or is incredible on its face, and the denial is not offered solely for purposes of delay." Interchurch Properties v. Contractor Exchange, 199 Ga.App. 726, 727-728(1), 405 S.E.2d 764 (1991).	Under Pennsylvania law, a breach of fiduciary duty claim is barred by the gist of the action doctrine, which focuses on whether tort claims pleaded along with contract claims constitute freestanding causes of action. If the fiduciary duty alleged is grounded in contractual obligations; however, claims for breach of fiduciary duty and breach of contract can coexist if the fiduciary duty is based on duties imposed as a matter of social policy and if the fiduciary duty is not based on a contractual agreement between the parties.	Is a breach of fiduciary duty claim barred by the gist of the action doctrine if a fiduciary duty alleged is grounded in contractual obligations?	Action - Memo #917 - C-17010VGVUNITJWJWV TQTHAMZMLXio.docx	ROSS-0000000315	Condensed SA, Sub	0.03	0	1	1	1	1
1694	Johnson v. City Wide Cab, 205 Ga.App. 502	307+4485	"The parties' dispute centers on whether the plaintiff's motion to withdraw admissions was timely. The plaintiff argues that the motion was timely because it was filed within the time period specified in the rules. The defendant argues that the motion was untimely because it was filed after the time period specified in the rules. The court concludes that the motion was timely because it was filed within the time period specified in the rules." (307 Ga.App. 502)	"If the burden of proof on the subject matter of the request for admission is on the requestor, the motion is required to show the admitted request either can be refuted by admissible evidence having a medium of credibility or is incredible on its face, and the denial is not offered solely for purposes of delay." O.C.G.A. § 9-11-36(b).	"If the burden of proof on the subject matter of the request for admission is on the requestor, is the motion required to show the admitted request?"	Perital Procedure - Memo # 2978 - C-MG.docx	ROSS-003290341-ROSS-003290342	SA, Sub	0.61	0	0	1	1	

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1695	State Farm Fire & Cas. Co. v. Wells, 194 F.3d 1003	366-1	Subrogation is somewhat different from assignment, however. "Subrogation is a creature of equity having for its purpose the working out of an equitable adjustment between the parties by securing the ultimate discharge of a debt by the person who in equity and good conscience ought to pay it." Am. Family Mut. Ins. Co. v. DeWitt, 199 P.3d 1331, 1336 (Colo.App.2008) (quoting United States v. Sclafano, 885 P.2d 273, 277 (Colo.App.1994)). "Subrogation occurs when one person is substituted in the place of another with reference to a lawful claim." Bankbridge, Inc. v. Travelers Cas. Co., 159 P.3d 748, 751, 1330 App.2d 006 (leading Browder v. U.S. Fed. & Guar. Co., 359 P.2d 132, 1330 App.2d 006) (quoting Browder v. U.S. Fed. & Guar. Co., 359 P.2d 132, 1330 App.2d 006). "Under the doctrine of equitable subrogation, when an insurer has paid its insured for a loss caused by a third party, it may seek recovery from the third party." Cont'l Divide Ins. Co. v. W. Skies Mgmt., Inc., 107 P.3d 1145, 1148 (Colo.App.2004). The insurer then stands in the shoes of its insured. Id. This prevents the insured from being unjustly enriched by recovering from both the insurer and the third party, and prevents the third party from escaping liability. Cotter Corp. v. Am. Empire Surplus Lines Ins. Co., 507 P.2d 834, 833 (Colo.2004).	"Subrogation" is a creature of equity having for its purpose the working out of an equitable adjustment between the parties by securing the ultimate discharge of a debt by the person who in equity and good conscience ought to pay it.	Is subrogation a creature of equity having for its purpose the working out of an equitable adjustment between the parties by securing the recovery of a debt or the satisfaction of a claim? Is the person who in equity and good conscience ought to pay it?	Subrogation - Memorandum - 587 - RM C.docx	R055-00328736-R055-00328737	SA, Sub	0.62	0	0	1	14,873	21,876	9,029
	Thrower v. Anon, 276 Neb. 102	366-12	In the instant case, Progressive argues that its right of subrogation against Anon was adversely affected by Thrower's release. Subrogation involves the substitution of one person in the place of another with reference to a lawful claim, demand, or right, so that the one who is substituted succeeds to the rights of the other in relation to the debt or claim and its rights, remedies, or securities. Blue Shield v. Daley, 268 Neb. 733, 687 N.W.2d 689 (2004). An insurer's subrogation rights can be no greater than the rights of an insured against a third party. See Hans v. Lucas, 270 Neb. 421, 703 N.W.2d 880 (2005). See, also, Quarry & Harrow v. Transcontinental Ins., 885 N.E.2d 1235, 1237 (Ind.2008) (Sullivan, J., dissenting, stating that " "[o]ne who asserts a right of subrogation must step into the shoes of, or be substituted for, the insured and not the insurer. The insurer can and only enforce those rights which the latter could enforce ").	"Subrogation" involves the substitution of one person in the place of another with reference to a lawful claim, demand, or right, so that the one who is substituted succeeds to the rights of the other in relation to the debt or claim and its rights, remedies, or securities.	"Does subrogation involve the substitution of one person in the place of another with reference to a lawful claim, demand, or right, so that the one who is substituted succeeds to the rights of the other in relation to the debt or claim and its rights, remedies, or securities?"	Subrogation - Memo 311- RM C.docx	R055-00329552-R055-00329553	SA, Sub	0.71	0	0	1	1		
1696			No duty is imposed upon a trial court to continue a case when no request for continuance has been made. The trial court has broad discretion in granting a continuance. (Thilman & Co. v. Esposito (1980), 87 Ill.App.3d 289, 293, 42 Ill.Dec. 305, 309, 408 N.E.2d 1014, 1018. Absence of counsel is just one factor to be considered in granting a continuance. A trial court has broad discretion in granting a continuance. Absence of counsel is just one factor to be considered in granting a continuance. The very fact that no one appeared to seek a continuance can be construed as lack of diligence. We hold, therefore, that the trial judge did not abuse his discretion by proceeding ex parte.	Absence of counsel is just one factor to be considered in granting a continuance; more important factor is whether party seeking continuance has acted with diligence, and the very fact that no one has appeared to seek a continuance can be construed as lack of diligence.	"Is absence of counsel just one factor to be considered in granting a continuance and is the more important factor whether the party seeking continuance has acted with diligence, and can the very fact that no one has appeared to seek a continuance be construed as lack of diligence?"	Pretrial Procedure - Memo # 3271 - C - KG.docx	R055-00330519-R055-00330510	SA, Sub	0.61	0	0	1	1		
	1697	09 II. App. 3462	Nationwide Mut. Fire Ins. Co. v. Gannell, 173 Vt. 45	Apart from the policy language itself, however, Nationwide relies upon equitable subrogation and a settlement to create its rights. The main doctrine involved is subrogation, as provided in the settlement agreement between VIB and Nationwide. Subrogation is an equitable doctrine that enables a secondarily liable party who has been compelled to pay a debt to be made whole by collecting that debt from the primarily liable party, who, in good conscience, should be required to pay. Norfolk & Dedham Fire Ins. Co. v. Aetna Cas. & Sur. Co., 132 Vt. 341, 343, 318 A.2d 659, 661 (1974). "[T]he right of subrogation is a favorite of the law, and the insured is entitled to its application" to reach a fair result.	Subrogation is an equitable doctrine that enables a secondarily liable party who has been compelled to pay a debt to be made whole by collecting that debt from the primarily liable party, who, in good conscience, should be required to pay.	"Does subrogation or doctrine of equitable subrogation enable a secondarily liable party who has been compelled to pay a debt to be made whole by collecting that debt from a party that was primarily liable party, who, in good conscience, should be required to pay?"	Subrogation - Memo # 701 - C - SA.docx	R055-003309773-R055-003309774	Condensed SA	0.67	0	0	1	1	
1698			A settlement agreement to divide disputed escrowed funds is not equivalent to payment of a debt of a third party and thus does not qualify for the first element of equitable subrogation. The doctrine of equitable subrogation is designed to protect parties who have actually given up property of value in order to discharge an obligation so that another party is not unjustly enriched at the parties' expense. If the property given up was of no value or the value was subject to dispute, the party incurred no ascertainable expense. Such failure is fatal to Alpha's equitable subrogation claim.	Doctrine of equitable subrogation is designed to protect parties who have actually given up property of value in order to discharge an obligation so that another party is not unjustly enriched at the parties' expense.	Is the doctrine of equitable subrogation designed to protect parties who have actually given up property of value in order to discharge an obligation so that another party is not unjustly enriched at the parties' expense?	Subrogation - Memo 289 - RM C.docx	R055-00331076-R055-00331077	Condensed SA	0.64	0	1	0	1		
1699															

Application of

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences	
1704	Monk v. Temple George Assoc., 273 Conn. 108	272+111	We recognize that "in considering whether public policy suggests the imposition of a duty, we... consider the following four factors: (1) the normal expectations of the participants in the activity under review; (2) the public policy of encouraging participation in the activity, while weighing the safety of the participants; (3) the avoidance of increased litigation; and (4) the decisions of other jurisdictions." Internal quotation marks omitted [Id., 670 (Bibop, J., dissenting), citing <i>Murillo v. Seymour Ambulance Assn., Inc.</i> , 264 Conn. 474, 480, 823 A.2d 1202 (2003)]. We apply these four factors and conclude that imposing a duty of care on the defendants under the circumstances of the present case is not inconsistent with public policy.	In considering whether public policy suggests the imposition of a duty in a negligence action, courts consider the following four factors: (1) the normal expectations of the participants in the activity under review; (2) the public policy of encouraging participation in the activity, while weighing the safety of the participants; (3) the avoidance of increased litigation; and (4) the decisions of other jurisdictions.	What are the factors which a court will consider in determining whether public policy suggests an imposition of a duty in a negligence claim?	005141.docx	LEGALSE-00117254-LEGALSE-00117255	SA, Sub	0.45	839	15,344	14,873	21,876	9,079	
1705	Brentwood Med. Assocs. v. United Mine Workers of Am., 396 F.3d 237	257+113	The Federal Arbitration Act codifies Congress' desire to uphold private arbitration agreements that produce prompt and fair dispute resolution without involving the courts. In furtherance of this interest, a court must scrupulously honor the bargain implicit in such agreements and interfere only when an award is severely problematic. See, e.g., <i>Shearson/American Exp., Inc. v. McMahon</i> , 482 U.S. 220, 223, 107 S.Ct. 2332, 96 L.Ed.2d 185 (1987). This appeal asks us to determine whether or not an arbitration award should be upheld where an arbitrator ineptly cites language in his decision that cannot be found in the relevant collective bargaining agreement. Because we conclude that such a mistake, while glaring, does not fatally tilt the balance of the arbitrator's decision in this case, we affirm the decision of the District Court upholding the award.	Federal Arbitration Act ("FAA") codifies Congress' desire to uphold private arbitration agreements that produce prompt and fair dispute resolution without involving courts. In furtherance of this interest, a court must scrupulously honor bargain implicit in arbitration agreements and interfere only when award is severely problematic. 9 U.S.C.A. § 1 et seq.	What is the intention of Congress in codifying Federal Arbitration Act?	004903.docx	LEGALSE-00117155-LEGALSE-00117157	SA, Sub	0.59	0	0	1	1		
1706	Stone-Isle v. Dept of Envt. Prot., 86 Mass. App. Ct. 16	149E+20	Issues on appeal: The plaintiff contends that the commissioner failed to accord the proper deference to the administrative magistrate's fact finding that rests on credibility determinations. We disagree. "Under § 10 Code Mass. Regs., 1.01(1)(b), the commissioner determines "every issue of fact or law necessary to the decision." "Ten Local Citizen Group, supra at 231, 928 N.E.2d 939. However, it is true that "when the subsidiary findings of an administrative magistrate rest on a "residual credibility questions (i.e., that a fact is true because a witness testified to it and that witness is believable), they should be entitled to substantial deference." " <i>Morris v. Board of Registration in Med.</i> , 405 Mass. 103, 111, 539 N.E.2d 50 (1989), quoting from <i>Vinal v. Contributory Retirement Appeal Bd.</i> , 13 Mass.App.Ct. 85, 101, 430 N.E.2d 440 (1982). Even so, the commissioner may reject subsidiary findings provided her decision contains a considered articulation of the reasons underlying that rejection." <i>Morris v. Board of Registration in Med.</i> , supra, quoting from <i>Vinal v. Contributory Retirement Appeal Bd.</i> , supra at 103 ¶ 102, 430 N.E.2d 440. See <i>Ten Local Citizen Group</i> , supra at 231, 928 N.E.2d 939 ("If the commissioner rejects an [administrative] magistrate's finding of credibility, it must be accompanied by an explanation").	Upon review of an administrative decision by the Commissioner of the Department of Environmental Protection, when the subsidiary findings of an administrative magistrate rest on a resolution of credibility questions (i.e., that a fact is true because a witness testified to it and that witness is believable), the Commissioner should afford them substantial deference; even so, the Commissioner may reject subsidiary findings provided her decision contains a considered articulation of the reasons underlying that rejection.	Must the Commissioner of Environmental Conservation's rejection of a magistrate's finding of credibility be accompanied by an explanation?	001055.docx	LEGALSE-00118098-LEGALSE-00118099	SA, Sub	0.61	0	0	1	1		
1707	Tanner Elec. Co-op. v. Puget Sound Power & Light Co., 128 Wash. 2d 656	145+112.1	The point of use test which the trial court applied is one of three tests used in the industry to resolve service area disputes. The point of use test dictates that only the utility authorized to serve within a territory may provide power to a facility within that territory. <i>Public Serv. Co. v. Public Util. Comm'n.</i> , 765 P.2d 1015, 1019 (Colo.1988). The point of service, or point of delivery, test focuses on the point at which electricity is delivered rather than on the point at which it is consumed. If a utility provides electricity to a customer within its territory, the sale is proper; even if the customer transports the power into the territory of another utility for the customer's use. <i>Public Serv. Co.</i> , 765 P.2d at 1015. The geographic load center test permits the utility which serves a majority of a customer's load to serve the entire load, regardless of the territorial boundaries of a service area. <i>Public Serv. Co.</i> , 765 P.2d at 1019.	For purposes of resolving electric utility service area disputes, "point of service test," or "point of delivery test," focuses on point at which electricity is delivered, rather than on point at which it is consumed; if utility provides electricity to customer within its territory, sale is proper, even if customer transports power into territory of another utility for customer's use.	Does the point of use test resolve service area disputes between electrical utilities?	002385.docx	LEGALSE-00119486-LEGALSE-00119488	Condensed, SA, Sub	0.59	0	1	1	1	1	
1708	Zurich Am. Ins. Co. v. S.-Owners Ins. Co., 248 F. Supp. 1d 1268	366+1	Next, ZAC addresses SOIC's specific contentions regarding its alleged pleading deficiencies. First, SOIC argues that ZAC "fail[ed] to plead that (1) the subrogation ZAC seeks would not work any injustice to the rights of the insured, and (2) the subrogation ZAC seeks would not work any justice to the rights of a third party." See Motion at 22. In response, ZAC acknowledges that it "does not expressly discuss the impact on the rights of any third-party" because "no such third party exists who could be adversely impacted by ZAC's equitable subrogation claim," and notes that "SOIC does not argue otherwise in [the] Motion." See Response at 15. Here, despite the absence of an explicit allegation that subrogation would not work an injustice to the rights of any third party, the Court can reasonably infer from ZAC's well-pled allegations that no third party would be injured by ZAC's equitable subrogation claim. Indeed, ZAC's allegations are sufficient to draw all reasonable inferences in favor of the plaintiff on a motion to dismiss. See <i>Omar</i> , 334 F.3d at 1247. It is particularly important in light of the Supreme Court of Florida's substantive "commitment to a liberal application of the rule of equitable subrogation." <i>Turnister Lumber & Export Co. v. Columbia Gas. Co.</i> , 115 Fla. 541, 551, 156 So. 116 (Fla. 1934). In determining whether or not to allow an equitable subrogation claim to proceed, the Supreme Court of Florida has emphasized that "equitable concerns outweigh" "technical rules of law." <i>Id.</i> at 550 ¶ 51, 156 So. 116. According to the court "[t]he doctrine of subrogation will be applied or not according to the dictates of equity and good conscience, and consideration of public policy, and will be allowed in all cases where the equities of the case demand. It rests upon the maxim that no one shall be enriched by another's loss, and may be modeled wherever justice demands its application, in opposition to the technical rules of law...The right to it depends upon the facts and circumstances of each particular case, and to which must be applied the principles of justice & fairness."	"Will the remedy of equitable subrogation be applied in all cases where demanded by the dictates of equity, good conscience, and public policy?"	Subrogation - Memo 8 - ANC.docx	ROSS-00288448-ROSS-00288451	SA, Sub	0.89	0	1	1	1			

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Between Original Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
1709	Bramon v. U-Haul, 945 S.W.2d 676	249+27	Three degrees of malice exist for purposes of actions for malicious prosecution. "Actual malice" is defined as ill will, spite, personal hatred, or revenge against a particular person, or some other individual, and "malice in law" is a wrongful act done intentionally without just cause or excuse. A plaintiff suing for malicious prosecution must prove legal malice, i.e., that the defendant initiated the prosecution for a purpose other than that of bringing an offender to justice. Sanders, 682 S.W.2d at 814 [8].	Three degrees of malice exist for purposes of actions for malicious prosecution. "Actual malice" is defined as ill will, spite, personal hatred, or revenge against a particular person, or some other individual, and "malice in law" is a wrongful act done intentionally without just cause or excuse.	What are the three degrees of malice in malicious prosecution actions?	002755.docx	LEGALCASE-00120252- LEGALCASE-00120253	SA, Sub	0.47	0	15,344	14,873	21,876	9,079
1710	Alcoa Inc. v. F.R.C., 564 F.3d 1342	145+1	"aggravated by an order issued by the Commissioner" to apply for rehearing. 161 U.S.C. § 825(a), and a sixty-day limitations period beginning after rehearing is petition for judicial review of the aggravating order. Id. 825(b). A party is aggrieved and may petition for judicial review "if it can establish both the constitutional and prudential requirements for standing, including an actual or imminent, not conjectural or hypothetical, injury in fact. Federal Power Act, § 1313(a), 16 U.S.C.A. § 8225(g).	A party is aggrieved by an order of the Federal Energy Regulatory Commission (FERC) and may petition for judicial review under the Federal Power Act (FPA) if it can establish both the constitutional and prudential requirements for standing, including an actual or imminent, not conjectural or hypothetical, injury in fact. Federal Power Act, § 1313(a), 16 U.S.C.A. § 8225(g).	How does a party establish that he is an aggrieved party under the Federal Energy Regulatory Commission (FERC) order?	Electricity - Memo 42 IS.docx	LEGALCASE-00090932- LEGALCASE-00090934	SA, Sub	0.48	0	0	1	1	
1711	In re PHN, 540 B.R. 1	366+1	Under Massachusetts law courts look to the following factors to determine whether equitable subrogation applies: (1) the subrogee made the payment to protect his or her own interest; (2) the subrogee did not act as a volunteer; (3) the subrogee was not primarily liable for the debt paid; (4) the subrogee paid off the entire encumbrance; and (5) the subrogee's payment was not made for its own benefit or for the benefit of the obligor. See, e.g., East Boston Sav. Bank v. Qian, 428 Mass. 327, 330, 701 N.E.2d 331 (1998). Not all factors need be present for equitable subrogation to apply. Id.	In deciding whether equitable subrogation applies, Massachusetts courts look for the presence of the following factors: (1) that alleged subrogee made payment to protect his or her own interests; (2) that subrogee did not act as a volunteer; (3) that subrogee was not primarily liable for the debt paid; (4) that subrogee paid off the entire encumbrance; and (5) that subrogee's payment was not made for its own benefit or for the benefit of the obligor. However, not all factors need be present for equitable subrogation to apply.	What factors must be determined before equitable subrogation can be applied?	Subrogation - Memo 77- ANG C.docx	R055-00328439-A055- 003198899	SA, Sub	0.1	0	0	1	1	
1712	Nat'l Labor Relations Bd. v. Little River Band of Ottawa Indians Tribal Gov't, 788 F.3d 537	209+222	Indian tribes retain broad residual power over intramural affairs; they may determine tribal membership, regulate domestic relations among members, prescribe rules of inheritance among members, and punish offenders. See, e.g., United States v. 450 U.S. 544, 549, 101 S.Ct. 1245, 67 L.Ed.2d 489 (1981). "When a tribal member is wrongfully entering tribal land." Plains Commerce, 554 U.S. at 327-78, 128 S.Ct. 2709 (citing Duro v. Reina, 495 U.S. 676, 696-97, 110 S.Ct. 2053, 109 L.Ed.2d 693 (1990)). "Conversely, when a tribal government goes beyond matters of internal self-governance and enters into an off-reservation business transaction with non-Indians, its claim of sovereignty is at its weakest." San Manuel, 475 F.3d at 1312-13 (citing Mesquero Apache Tribe v. Jones, 411 U.S. 445, 448-49, 59 S.Ct. 1267, 1 S.Ct. 1622 (1963)).	Indian tribes retain broad residual power over intramural affairs, and may determine tribal membership, regulate domestic relations among members, prescribe rules of inheritance among members, and punish offenders, and exclude outsiders from entering tribal land.	Does an Indian tribe retain power to regulate tribal membership and domestic relations among members?	003234.docx	LEGALCASE-00120749- LEGALCASE-00120740	SA, Sub	0.68	0	0	1	1	
1713	Howard Univ. v. Roberts-Williams, 37 A.3d 895	3076+3	We also reject Howard's contention that the trial court improperly permitted Professor Jennings to testify beyond the scope permitted by Judge Clark's order. Generally, "the law of the case" doctrine, a trial judge presiding over later phases of a proceeding is bound by an earlier final ruling by a judicial colleague, unless new facts have arisen in the interim. "In re Barlow, 634 A.2d 1246, 1248 n. 3 (D.C.1993). However, the law of the case doctrine is not applied to the extent that it would prevent the trial court from revisiting its prior ruling in the context of the presentation of the evidence in the case." Jung, 875 A.2d at 103, [internal quotation marks omitted], amended on reh'g, 883 A.2d at 105. Here, as Judge Brannan determined, Judge Clark's order was directed at the liability phase of the case, not damages; moreover, nothing precluded Professor Jennings from testifying about other matters within her expertise, so long as she did not attempt to offer an opinion about "the ultimate decision on tenure." Furthermore, Howard knew at the time of the trial that Professor Jennings was not a tenure professor and that Howard's denial of tenure to Professor Roberts-Williams would have "a substantial and adverse effect on her ability to obtain a tenure track position in her field at another institution." Therefore, Howard could not have been surprised about Professor Jennings' testimony, and Howard could have designated its own expert to counter Professor Jennings' testimony relating to Professor Roberts-Williams' economic damages.	Rulings on motions in limine normally are considered provisional, in the sense that the trial court may revisit its pre-trial evidentiary rulings in the context of the presentation of the evidence in the case.	"Are rulings on motions in limine normally considered provisional, in the sense that the trial court may revisit its pre-trial evidentiary rulings in the context of the presentation of the evidence in the case?"	Perital Procedure - Memo # 231 - C- ES.docx	R055-00328439-A055- 003383440	SA, Sub	0.87	0	0	1	1	
1714	First Specialty Ins. Corp. v. Noupro Risk Sols., LP, 468 F. Supp. 2d 1321	366+26	Under New Jersey law, "subrogation is an equitable rather than a contractual doctrine applied in the interest of justice when one party who is not a volunteer pays an obligation which should be imposed on another. A payor is not a volunteer if it is acting under compulsion to protect its own interests." See, e.g., Travlers Indemnity Co., 947 P.2d 150, 151 (N.J.1997). In defending and settling the claims claimant made against the payor, the payor is not acting as a volunteer, at least in part protecting its own interests. The evidence at trial was uncontested that, regardless of whether Loyd's property rejected First Specialty's tender of the defense of Hunka Bunka, First Specialty was essentially "stuck between a rock and a hard place." That is, under New Jersey law and the facts presented, even Loyd's witnesses conceded during trial that First Specialty could not abandon Hunka Bunka after Loyd's refusal to assume Hunka Bunka's defense. First Specialty was not a volunteer because it was not acting as a volunteer, and good faith belief that First Specialty was estopped to deny coverage (not estopped by Loyd's, but rather estopped by Hunka Bunka). See Griggs v. Bertram, 88 N.J. 347, 443 A.2d 163, 167 (1982) (carrier undertaking to defend suit against its insured with knowledge of facts that are relevant to policy defenses or basis for noncoverage without a reservation of rights is estopped to later deny coverage).	Under New Jersey law, "subrogation" is equitable rather than contractual doctrine, applied in interest of justice when one party who is not a volunteer pays obligation which should be imposed on another.	"Is subrogation an equitable rather than contractual doctrine, applied in interest of justice when one party who is not a volunteer pays obligation which should be imposed on another?"	043694.docx	LEGALCASE-00121322- LEGALCASE-00121323	SA, Sub	0.86	0	0	1	1	

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Between Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
	Bainbridge v. Travelers Indem. Co., 159 P.2d 716	366-1	Furthermore, because it is an equitable doctrine, no additional actions are needed before subrogation can occur. Thus, and with respect to the assignment of the claim, the assignment of the claim to the assignee is a legal subrogation which arises by operation of law. In re Pearce, 236 B.R. 261, 264-65 (Bankr. S.D. Ill. 1999). To assert a right of subrogation, a potential subrogee is required to satisfy the following requirements: (1) the debt or claim must have been paid in full; (2) the subrogee must have paid a debt for which a third party and not the subrogee is primarily liable; (3) the subrogee must possess a right which he could enforce against a third party; and (4) the subrogee must not have acted as a mere volunteer in paying debt or claim.	Equitable subrogation is a creature of equity having for its purpose the working out of an equitable adjustment between the parties by securing to the person who has paid the debt by the person who in equity and good conscience ought to pay it.	Is equitable subrogation a creature of equity having for its purpose the working out of an equitable adjustment between the parties by securing to the person who has paid the debt by the person who in equity and good conscience ought to pay it?	Subrogation - Memo # 301 - C - No.docx	ROSS-00331204-K055-00331206	SA, Sub	0.76	0	1	1	1	9,079
1715														
	In re Karp, 373 B.R. 837	366-1	Under Illinois case law, there are two types of subrogation: conventional subrogation, which arises by operation of law, and legal subrogation, which arises by operation of law. In re Pearce, 236 B.R. 261, 264-65 (Bankr. S.D. Ill. 1999). To assert a right of subrogation, a potential subrogee is required to satisfy the following requirements: (1) the debt or claim must have been paid in full; (2) the subrogee must have paid a debt for which a third party and not the subrogee is primarily liable; (3) the subrogee must possess a right which he could enforce against a third party; and (4) the subrogee must not have acted as a mere volunteer in paying debt or claim.	Four requirements must be met in order for potential subrogee to assert subrogation: (1) the debt or claim must have been paid in full; (2) the subrogee must have paid a debt for which a third party and not the subrogee is primarily liable; (3) subrogee must possess right which he could enforce against third party; and (4) subrogee must not have acted as mere volunteer in paying debt or claim.	What four requirements must be met in order for a potential subrogee to assert the right of subrogation?	043862.docx	LEGLEASE-00121418-LEGLEASE-00121419	SA, Sub	0.63	0	0	1	1	
1716														
	Sarahive v. Bankers Tr. Co., 34 N.2d 404	366-4	Another remedy available to pursue is that of subrogation. Section 4-107 of the code states that: "If a payer has paid an item over the stop payment order of the drawer or maker or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payer bank shall be subrogated to the rights of the drawer or maker against the payee with respect to the transaction out of which the item arose." The papers with respect to the transaction out of which the item arose, the authority and other allegations that would give rise to a cause of action by Modern against Elizabeth. The Bank specifically claimed the right to be subrogated to Modern's claims against Elizabeth in the affidavit of its vice president opposing the summary judgment motion.	Statute providing that, if payer bank has paid item over stop payment order of drawer, to prevent unjust enrichment and only to extent necessary to prevent loss to bank by reason of its payment of item, payer bank shall be subrogated to rights of maker against payee with respect to transaction out of which item arose confers on bank substantive rights of subrogation, even if technical mechanical requirements of common-law subrogation have not been met. Uniform Commercial Code, § 4-407.	When does payer bank have to be subrogated to right of drawer against payee to prevent unjust enrichment?	044056.docx	LEGLEASE-00121514-LEGLEASE-00121515	Condensed SA, Sub	0.47	0	1	1	1	
1717														
	Kansas City, Mo. v. Tri-City Bank, 170	239-7	Under Missouri law all that is necessary for a surety's equitable right of subrogation to arise is that the creditor be in default and that the obligation of the contractor is that the contractor be in default as a matter of fact, and that as a result of such default the surety becomes obligated to pay under its payment bond, and discharge the obligations of its principal." First State Bank v. Reorganized School District R73, 495 S.W.2d 471, 481 (Mo.App. 1973). The contractor in this case was in default when it could not pay its subcontractors, laborers and materialmen. That default was fully recognized by all parties concerned when the contractor and the City to make all future payments to the subcontractors. 22, 1985.	All that is necessary for surety's equitable right of subrogation and contractor is that the contractor be in default as a matter of fact and that the surety become obligated to pay under its payment bond and discharge the obligation.	What is necessary for a surety's equitable right of subrogation and contractor to be in default as a matter of fact and that the surety become obligated to pay under its payment bond and discharge the obligation?	Subrogation - Memo # 093 - C - Sub.docx	ROSS-00330460-K055-00330461	SA, Sub	0.59	0	0	1	1	
1718	Walker Process Equip. Co. v. Goody Bldg. Corp., 129 Vt. 333	366-1	Subrogation is an equity called into existence for the purpose of enabling a party secondarily liable, but who has paid the debt, to reap the benefit of any securities or remedies which the creditor may hold against the principal debtor and by the use of which the party paying may thus be made whole. Clifford v. West Hartford Creamery Co., Inc., 103 Vt. 229, 238, 133 A. 205, 17 Am.Jur.2d, Contractors' Bonds, Sections 42 and 107, and the cases there cited. The claimant in this case was subrogated for the bond interpreted by the Village had a ready been established.	"Subrogation" is an equity called into existence for purpose of enabling party secondarily liable but who has paid debt to reap benefit of any securities or remedies which creditor may hold against principal debtor and by use of which party paying may thus be made whole.	Does the doctrine of equitable subrogation or subrogation enable a secondarily liable party who has been compelled to pay a debt to be made whole by collecting that debt from the primarily liable party?	044075.docx	LEGLEASE-00121609-LEGLEASE-00121610	SA, Sub	0.53	0	0	1	1	
1719														
	State Farm Fire & Cas. Co. v. Wells, 194 P.3d 1063	366-1	Assignment is the voluntary transfer of some right or interest to another person. Cont'l Cas. Co. v. Ryan Inc. Eastern, 974 So.2d 868, 376 (Fla.2008). The pertinent differences between assignment and subrogation include the following: (1) assignment transfers the entire value of the claim, whereas subrogation transfers the claim only to the extent necessary to reimburse the subrogee; (2) assignments are typically voluntary transfers, whereas subrogations, usually insurers, are obligated to pay the insured's obligation to a third party; and (3) assignment is an outright transfer of the claim, whereas subrogation entails a substitution of the subrogee for the subrogee. Inel v. Travelers Indem. Co., 132 Ind.App. 75, 281 N.E.2d 919, 921 (1972). These differences address the profit motive usually associated with an assignment. While important, they do not address the interference with the attorney-client relationship.	The pertinent differences between assignment and subrogation include the following: (1) assignment transfers the entire value of the claim, whereas subrogation transfers the claim only to the extent necessary to reimburse the subrogee; (2) assignments are typically voluntary transfers, whereas subrogations, usually insurers, are obligated to pay the insured's obligation to a third party; and (3) assignment is an outright transfer of the claim, whereas subrogation entails a substitution of the subrogee for the subrogee. Inel v. Travelers Indem. Co., 132 Ind.App. 75, 281 N.E.2d 919, 921 (1972). These differences address the profit motive usually associated with an assignment. While important, they do not address the interference with the attorney-client relationship.	What are the pertinent differences between assignment and subrogation?	044445.docx	LEGLEASE-00121669-LEGLEASE-00121670	SA, Sub	0.44	0	0	1	1	
1720														

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1721	A5 Viorane Reder v. United States, 895 F.2d 1441	15A+1339	By characterizing the relationship between an arbitration award and the power of the FMC to review the dispute as a "jurisdictional" issue, both parties needlessly injected a confusing twist to the proper analysis. Private regulated parties cannot agree to waive the subject matter jurisdiction of the agency charged with the statutory responsibility to insure that parties implement agreements as approved by and filed with that agency. And just as assuredly, private parties may not agree to confer such powers on an arbitration panel. See <i>Duke Power Co. v. FEC</i> , 864 F.2d 823, 825 (D.C.Cir. 1988); <i>Swift & Co. v. FMC</i> , 306 F.2d 277, 283 (D.C.Cir.1962). Section 10(a)(3) of the Shipping Act of 1984 prohibits any carrier from "operat[ing] under an agreement required to be filed ... except in accordance with the terms of the agreement or any modifications made by the Commission to the agreement." 46 U.S.C.App. "1709(a)(3) (Supp. V.1987). To enforce this prohibition, section 11(c) of the Act authorizes the "Commission, upon complaint or upon its own motion, [to] investigate any conduct or agreement that it believes may be in violation" of the Act. 46 U.S.C.App. "1710(c) (Supp. V.1987). Since Congress clearly envisioned a role for the FMC to play in investigating and adjudicating possible violations of the Shipping Acts, we think it rather extreme to conclude that the FMC "waived" its statutory obligations simply by approving an arbitration clause. Cf. <i>Shearson/American Express, Inc. v. McMahon</i> , 482 U.S. 220, 227, 107 S.Ct. 2332, 2337, 96 L.Ed.2d 185 (1987) (noting that Congress may indicate its intent not to preclude judicial remedies in favor of arbitration by "an inherent conflict between arbitration and the statute's underlying purposes").	Private, regulated parties cannot agree to waive subject matter jurisdiction of agency charged with statutory responsibility to insure that parties implement agreements as approved by and filed with that agency.	Alternative Dispute Resolution - Memo 377 - R.docx	R055-003284964-R055-003284965	Condensed, SA	0.88	839	1	15,344	14,873	21,876	9,079	
1722	Builders Supply Co. v. Czerwinski, 275 Neb. 622	309+115(1)	Nebraska jurisprudence supports the general legal proposition to which Czerwinski alludes that despite the absolute nature of a guaranty, a creditor can act or fail to act in such a manner as to impair collateral securing a guaranty and that such impairment of collateral, in the absence of certain other factors, can be a defense to the guaranty's enforceability. This court has noted that regardless of whether a guaranty is absolute or conditional, [i]f the general rule is that a surety or guarantor is entitled to be subrogated to the benefit of all the security and means of payment under the creditor's control and, therefore, in the absence of assent, waiver, or estoppel, he is generally released by an act of the creditor which deprives him of such right. Custom Leasing, Inc. v. Carlson Stapler & Supply, Inc., 203 Neb. 29, 338 N.W.2d 606 (1983) (quoting <i>Myers v. Bank of Nebraska</i> , 235 Neb. 29, 338 N.W.2d 606 (1983) (citing <i>Custom Leasing, Inc. v. Carlson Stapler & Supply, Inc.</i> , supra, and concluding under the facts that guarantors waived right to object to creditor's release of collateral and that therefore, creditor's release of collateral did not discharge guarantors).	The general rule is that a surety or guarantor is entitled to be subrogated to the benefit of all the security and means of payment under the creditor's control and, therefore, in the absence of assent, waiver, or estoppel, he is generally released by an act of the creditor which deprives him of such right.	Is there a general rule that a surety or guarantor is entitled to be subrogated to the benefit of all the security and means of payment under the creditor's control?	Subrogation - Memo # 739 - C - 5U.docx	R055-003297105-R055-003297106	SA, Sub	0.75	0	0	1	1	1	
1723	W. Sur. Co. v. Iov, 3 Kan. App. 2d 310	36+7(1)	Nor does place any significance on the trial court's finding that Western did not allege fraud or gross negligence. Such an allegation and proof are not required, as was noted in <i>Martin v. Federal Surety Co.</i> , 38 F.2d 79, 86 (8th Cir. 1932), where it was said: "[W]here subrogation is sought by a third party to the rights of the original creditor as against third parties, there must have been either participation in the original wrongful act or negligence on the part of the third party sought to be charged. But it is not necessary that such negligence be culpable or gross."	Where subrogation is sought by a surety to the rights of the original creditor as against third parties, there must have been either participation in an original wrongful act or negligence on the part of the third party sought to be charged, but it is not necessary that such negligence be culpable or gross.	"Where subrogation is sought by a surety to the rights of the original creditor as against third parties, should there be participation in an original wrongful act or negligence on the part of the third party sought to be charged?"	Subrogation - Memo # 741 - C - SA.docx	R055-003297151-R055-003297151	SA, Sub	0.47	0	0	1	1	1	
1724	R.S.B. Ventures v. Benowitz, 211 So. 3d 239	13+6(1)	The standard of review applicable to an order granting a motion to dismiss is de novo. <i>Kohl v. Blue Cross & Blue Shield of Fla., Inc.</i> , 938 So.2d 654, 658 (Fla. 4th DCA 2008). A cause of action for legal malpractice has three elements: (1) the attorney's employment; (2) the attorney's neglect of a reasonable duty; and (3) the attorney's negligence was the proximate cause of loss to the client. <i>Kates v. Robinson</i> , 786 So.2d 61, 64 (Fla. 4th DCA 2001). A cause of action for legal malpractice in the litigation context does not accrue until "the litigation is concluded by final judgment" and "the final judgment becomes final," meaning that the time for filing an appeal or post judgment motions has expired or, if an appeal was taken, the underlying legal proceedings has been completed on appellate review. <i>Silverstone v. Edell</i> , 721 So.2d 1173, 1175 & n.2 (Fla. 1998).	A cause of action for legal malpractice in the litigation context does not accrue until the litigation is concluded by final judgment and the final judgment becomes final, meaning that the time for filing an appeal or postjudgment motions has expired or, if an appeal was taken, the underlying legal proceedings has been completed on appellate review.	Does a cause of action for legal malpractice in the litigation context accrue before the litigation is concluded by final judgment?	Action - Memo # 51 - C - 5U.docx	R055-003310831-R055-003310832	SA, Sub	0.6	0	0	1	1	1	
1725	United States v. Jefferson, 674 F.3d 332	63+1(1)	In this situation, Jefferson intended to promote, for example, <i>Galle, Mody, and Arieli</i> , in his official capacity as a congressman, in exchange for money and things of value paid through his family's businesses. The fact that the money was paid through his family's businesses, rather than being paid directly to Jefferson, does not make Jefferson's conduct any less culpable. Jefferson's conduct was in violation of the bribery statute. As we held in <i>United States v. Quinn</i> , the government needs not prove "that the defendant intended for his payments to be tied to specific official acts (or omissions). Rather, it is sufficient to show that the payer intended for each payment to induce the official to adopt a specific course of action." In other words, "[t]he quid pro quo requirement is satisfied so long as the evidence shows a course of conduct of favors and gifts flowing to a public official in exchange for a pattern of official actions favorable to the donor."	Does the Government need to show that the defendant intended for his payments to be tied to specific official acts or omissions in order to establish the quid pro quo essential to proving bribery?	Does the Government need to show that the defendant intended for his payments to be tied to specific official acts or omissions in order to establish the quid pro quo essential to proving bribery?	011020.docx	LEGAEASE-00122600-LEGAEASE-00122601	SA, Sub	0.69	0	0	1	1	1	
1726	Generv v. Blair Civ. Convention & Sports Facilities Auth., 805 A.2d 51	148+2.1	These findings of the trial court demonstrate a misunderstanding of the standard for establishing a <i>de facto</i> taking under the Code. "Merely having a house that is somewhat less desirable to live in does not constitute the type of exceptional circumstance needed to prove a <i>de facto</i> taking of an entire residential property." <i>Department of Transportation v. Shepler</i> , 114 Pa. Cmwlth. 300, 340, A.2d 175, 178 (1985).	Does merely having a house that is somewhat less desirable to live in does not constitute the type of exceptional circumstance needed to prove a <i>de facto</i> taking of an entire residential property?	Does merely having a house that is less desirable to live in constitute the type of exceptional circumstance needed to prove a <i>de facto</i> taking of an entire residential property?	017467.docx	LEGAEASE-00122703-LEGAEASE-00122704	SA, Sub	0.52	0	0	1	1	1	

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1727	Du Daibau v. Cuso Sys., 2 F. Supp. 3d 717	22:1-42	The act of state doctrine is premised on the principle that "every sovereign state is bound to respect the independence of every other sovereign state, and that each state has the right to the exclusive jurisdiction within its own territory." Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 416, 84 S.Ct. 923, 11 S.Ct. 83, 42 Fed. 456 (1967). The doctrine is "a consequence of domestic separation of powers, reflecting 'the strong sense of the judicial branch that its engagement in the task of passing on the validity of foreign acts of state may make the conduct of foreign affairs... less expeditious &... less certain.'" United States v. Eder Int'l, Inc. v. Gov't of Sovereign Democratic Republic of Fiji, 834 F.Supp. 167, 171 (E.D.Va.1993) aff'd, 32 F.3d 777 (4th Cir.1994) (citing Sabbatino, 376 U.S. at 428, 84 S.Ct. 923).	The act of state doctrine is premised on the principle that every sovereign state is bound to respect the independence of every other sovereign state, and that each state has the right to the exclusive jurisdiction within its own territory. the government of another, done within its own territory.	"Under the act of state doctrine, will the courts of one country sit in judgment on the acts of the government of another, done within its own territory?"	International Law - Memo at 103 - C - US.docx	ROSS-00228813-1055-003298620	SA, Sub	0.77	0	15,344	14,873	21,876	9,079
1728	Wardlaw v. Ali, 381 F. Supp. 3d 653	90+25-88	The act of state doctrine prevents federal courts "from inquiring into the validity of the public acts a recognized foreign sovereign power committed within its own territory." Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 401, 84 S.Ct. 923, 11 S.Ct. 83, 42 Fed. 456 (1967). Like the political question doctrine, the act of state doctrine is derived in part from the concern that the judiciary by questioning the validity of such acts, could interfere with the Executive Branch's conduct of foreign affairs. 400 U.S. 106, 110 S.Ct. 370, 1 Fed. 2d 48 (1960). Accordingly, a plaintiff's claim may be barred to the extent that it challenges (1) an "official act of a foreign sovereign performed within its own territory"; and (2) "the relief sought or the defense interposed [would require] a court in the United States to declare invalid the [foreign sovereign's] official act." Id. at 405, 110 S.Ct. 370.	Like the political question doctrine, the act of state doctrine is derived in part from the concern that the judiciary, by questioning the validity of a foreign government's acts, could interfere with the Executive Branch's conduct of foreign affairs.	"Like the political question doctrine, is the act of state doctrine derived in part from the concern that the judiciary could interfere with the conduct of foreign affairs?"	019670.docx	LEGALISE-00123841-LEGALISE-00123843	SA, Sub	0.74	0	0	1	1	
1729	Urbach v. Bordin, 642 F. Supp. 2d 473	22:1-42	A determination of whether the act of state doctrine applies, the Supreme Court has said, is not a question of law. See, e.g., United States v. Eder Int'l, Inc. v. Gov't of Sovereign Democratic Republic of Fiji, 834 F.Supp. 167, 171 (E.D.Va.1993) aff'd, 32 F.3d 777 (4th Cir.1994) (citing Sabbatino, 376 U.S. at 428, 84 S.Ct. 923, 11 S.Ct. 83, 42 Fed. 456 (1967)).	The determining whether the act of state doctrine applies, as would prevent a federal court from adjudicating a dispute, is not a question of law. It is an official action of a foreign sovereign, court considers (1) the degree of consensus regarding a certain area of international law, (2) the extent to which the issue "touches" sharply on national nerves, and (3) whether the government that perpetrated the actions is no longer in existence.	What factors does a court consider in determining whether the act of state doctrine applies?	019866.docx	LEGALISE-00123193-LEGALISE-00123192	Condensed, SA, Sub	0.14	0	1	1	1	1
1730	Fed. Republic of Germany v. Eickard, 358 F. Supp. 747	22:1-34	Any "foreign" minister to characterize such a suit as involving purely private rights and therefore outside the realm of international affairs, it is a mistake to restrict unduly limits the scope of international affairs. It is a mistake to restrict the label of international affairs to negotiations between governments concerning subjects in the nature of national defense and foreign cultural exchanges. A government is in every sense of the word acting in international affairs when it seeks the aid of a foreign government in an attempt to vindicate the private rights of specific citizens or of its citizenry as a whole. Sabbatino, 376 U.S. 398, 401, 84 S.Ct. 923, 11 S.Ct. 83, 42 Fed. 456 (1967).	A government is in every sense of the word acting in international affairs when it seeks the aid of a foreign government in an attempt to vindicate the private rights of specific citizens or of its citizenry as a whole.	"Is a government acting in international affairs when it seeks the aid of a foreign government in an attempt to vindicate the private rights of specific citizens or of its citizenry as a whole?"	International Law - Memo at 187 - C - PH5.docx	LEGALISE-00031331-LEGALISE-00031332	SA, Sub	0.82	0	0	1	1	
1731	United States v. Sum of \$70,990,605, 234 F. Supp. 3d 212	22:1-42	To accept the Shadham Claimants' invitation to construe the act of state doctrine to apply here would drastically expand the scope of the rule; it would apply in virtually any case in which a foreign government issues a formal decree or decision that declares that a position taken by a litigant in a court in the United States is contrary to an international agreement or the laws of the foreign state. Such a rule would not only break with the long-standing principle that the act of state doctrine is limited to the proper distribution of functions between the judicial and political branches of the Government on matters bearing upon foreign affairs." Sabbatino, 376 U.S. at 427-28, 84 S.Ct. 923. The fact that a case might frustrate the expectations or views of a foreign state, moreover, is no reason for a court to disregard the principle that "courts in the United States have the power, and ordinarily the obligation, to decide cases and controversies on their merits." United States v. Eder Int'l, Inc. v. Gov't of Sovereign Democratic Republic of Fiji, 834 F.Supp. 167, 171 (E.D.Va.1993) aff'd, 32 F.3d 777 (4th Cir.1994) (citing Sabbatino, 376 U.S. at 428, 84 S.Ct. 923).	The act of state doctrine does not establish an exception for cases or controversies that may embarrass foreign governments, but merely requires that, in the process of deciding, the acts of foreign sovereigns taken within their own jurisdiction shall be deemed valid.	Does the act of state doctrine require acts of foreign sovereigns taken within their own jurisdiction to be deemed valid?	020050.docx	LEGALISE-00123453-LEGALISE-00123454	SA, Sub	0.81	0	0	1	1	

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1732	Branch v. T.C., 141 F.2d 31.	221+134	The United States may protect its commerce from the wrongful acts of its own citizens who, as the parties did, within the territorial jurisdiction of the United States, have committed a wrongful act. The United States and the United States who are in competition for that commerce. We think the power of Congress has given the Federal Trade Commission under Section 5(a) of the Federal Trade Commission Act is ample to support the jurisdiction exercised by the Commission in this case. The exercise by the United States of its sovereign control over its commerce and the acts of its resident citizens therein is no invasion of the sovereignty of any other country or any attempt to act beyond the territorial jurisdiction of the United States.	The United States in exercising its sovereign control over its commerce and acts of its resident citizens therein does not invade sovereignty of any other state or attempt to act beyond territorial jurisdiction of the United States.	"Does the United States, in exercising its sovereign control over its commerce and acts of its resident citizens therein invade the sovereignty of another state or attempt to act beyond territorial jurisdiction of the United States?"	International Law - Memo 2229 - C - CBA.docx	ROSS-002296596-1055-002296597	SA, Sub	0.68	839	15,344	14,873	21,876	9,029
	Siderman de Blake v. Republic of Argentina, 965 F.2d 699	221+142	In contrast to the jurisdictional nature of foreign sovereign immunity under the FISA, "[t]he act of state doctrine is not a jurisdictional limit on courts." Liu, 887 F.2d at 1431. The doctrine reflects the prudential concern that the courts, if they question the validity of sovereign acts taken by foreign states, may be interfering with the conduct of American foreign policy. American foreign policy by the Executive and Congress; doctrine does not act on the lack of subject matter jurisdiction but for failure to state a claim upon which relief can be granted. Fed.Rules Civ.Proc.Rule 12(b)(1) - 6). 28 U.S.C.A.	"Act of state doctrine" is not a jurisdictional limit on courts, but reflects prudential concern that the courts, if they question the validity of sovereign acts taken by foreign states, may be interfering with the conduct of American foreign policy by the Executive and Congress; doctrine does not act on the lack of subject matter jurisdiction but for failure to state a claim upon which relief can be granted. Fed.Rules Civ.Proc.Rule 12(b)(1) - 6). 28 U.S.C.A.	"Does the act of state doctrine reflect the concern that the judiciary, by questioning the validity of sovereign acts taken by foreign states, may interfere with the executive branch's conduct of foreign policy?"	020092.docx	LEGALEASE-00123413-LEGALEASE-00123415	Condensed, SA, Sub	0.75	0	1	1	1	1
1733														
1734	Du Daubain v. Cusso Snc, 2 P. supp. 30 717	221+142	The act of state doctrine is premised on the principle that "[e]very sovereign government is entitled to the respect of other sovereign governments, and the respect of one government will not sit in judgment on the acts of the government of another, done within its own territory." Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 416, 84 S.Ct. 923, 11 S.Ct. 83, 42 Led. 456 (1967). The doctrine is "a consequence of domestic separation of powers, reflecting 'the strong sense of the judicial branch that its engagement in the task of passing on the validity of foreign acts of state may have the conduct of foreign relations in the hands of the Executive and Congress.'" Fed.Rules Civ.Proc. 12(b)(1) - 6). 28 U.S.C.A. 1201-1207. "The doctrine's purpose is to prevent judicial pronouncements that would disrupt this country's foreign relations." Edgert Int'l, Inc. v. Gov't of Sovereign Democratic Republic of Fiji, 834 F.Supp. 367, 171 (E.D.Va.1993) aff'd, 32 F.3d 177 (4th Cir.1994) (citing Sabbatino, 376 U.S. at 428, 84 S.Ct. 923).	The act of state doctrine is premised on the principle that every sovereign government is entitled to the respect of other sovereign governments, and the respect of one government will not sit in judgment on the acts of the government of another, done within its own territory.	"Is the act of state doctrine a non-judicial, prudential doctrine that is premised on the separation of powers and the respect of one government will not sit in judgment on the acts of the government of another, done within its own territory?"	020093.docx	LEGALEASE-00123122-LEGALEASE-00123124	SA, Sub	0.77	0	0	1	1	
	Harper v. Patterson, 270 Ga. App. 437	3076+3	A motion in limine is a pretrial motion which may be used two ways: (1) The movant seeks, not a final ruling on the admissibility of evidence, but only to prevent the mention by anyone, during the trial, of a certain item of evidence or area of inquiry until its admissibility can be determined during the course of the trial outside the presence of the jury. (2) The movant seeks a ruling on the admissibility of evidence prior to the trial. The trial court has an absolute right to refuse to decide the admissibility of evidence prior to trial, the court's determination of admissibility is similar to a preliminary ruling on evidence at a pretrial conference and it controls the subsequent course of action, unless modified at trial to prevent manifest injustice.	A motion in limine is a pretrial motion which may be used two ways: (1) The movant seeks, not a final ruling on the admissibility of evidence, but only to prevent the mention by anyone, during the trial, of a certain item of evidence or area of inquiry until its admissibility can be determined during the course of the trial outside the presence of the jury. (2) The movant seeks a ruling on the admissibility of evidence prior to the trial. The trial court has an absolute right to refuse to decide the admissibility of evidence prior to trial, the court's determination of admissibility is similar to a preliminary ruling on evidence at a pretrial conference and it controls the subsequent course of action, unless modified at trial to prevent manifest injustice.	"Is 'motion in limine' the same commonly given a pretrial motion that attempts to prevent the offer of, or reference to, specific evidence or other matter in the presence of the jury?"	024054.docx	LEGALEASE-00123013-LEGALEASE-00123014	SA, Sub	0.53	0	0	1	1	
1735														
1736	Evans v. Family Vine of Am., 141 N.C. App. 530	30+205	Not all evidence is prejudicial, and that the trial court erred in its ruling on evidence in limine. The face of which were held open pending a proffer of evidence at trial. A motion in limine seeks "pretrial determination of the admissibility of evidence proposed to be introduced at trial," and is recognized in both civil and criminal trials. State v. Tate, 141 N.C. App. 567, 569, 261 S.E.2d 506, 508, m'd on other grounds, 300 N.C. 180, 265 S.E.2d 223 (1980). Rulings on these motions are merely preliminary and thus, subject to change during the course of trial. Laidlaw v. Laidlaw, 30 N.C. App. 610, 612, 226 S.E.2d 102, 103 (1968). Thus, an objection to an order granting or denying the motion "is insufficient to preserve for appeal the question of the admissibility of evidence." State v. Conway, 339 N.C. 521, 521, 453 S.E.2d 824, 845 (1995).	Rulings on motions in limine are merely a preliminary and subject to change during the course of trial, depending on the actual evidence offered at trial, and thus, objection to an order granting or denying such motion is insufficient to preserve for appeal the question of the admissibility of evidence.	"Is an objection to an order granting or denying such motion insufficient to preserve for appeal the question of the admissibility of evidence?"	021855.docx	LEGALEASE-00123115-LEGALEASE-00123117	SA, Sub	0.68	0	0	1	1	

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1727	Katzenbach v. Perry, 152 Cal.App. 4th 1286	367A-3	While trial judges ordinarily enjoy broad discretion with respect to the admission and exclusion of evidence in ruling on motions in limine, a court's discretion is limited by the legal principles applicable to the case. (Adams v. Aerojet General Corp. (2003) 86 Cal. App. 4th 1324, 1330, 104 Cal.Rptr.2d 116.) "The scope of discretion always resides in the particular law being applied, i.e., in the 'legal principles governing the subject of [the] action.' Action that transgresses the confines of the applicable principles of law is outside the scope of discretion and we call such action an 'abuse of discretion.'" (Kelsay v. Board of Medical Examiners, 49 Cal. 4th 907, 920, 92 Cal.Rptr.2d 107, 117, 255 Cal.App. 4th 704.) Thus, if the trial court's in limine ruling was based upon a misinterpretation of applicable law, an abuse of discretion has been shown.	While trial judges ordinarily enjoy broad discretion with respect to the admission and exclusion of evidence in ruling on motions in limine, a court's discretion is limited by the legal principles applicable to the case.	"With respect to the admission and exclusion of evidence in ruling on motions in limine, it is a court's discretion limited by the legal principles applicable to the case?"	Pretrial Procedure - Memo #354 - R.docx	R055-00208514-1055-00328342	SA, Sub	0.78	839	15,344	14,873	21,876	9,079
1728	In re Goodman Indus., 21 B.R. 512	366F-7(1)	Trustee filed complaint seeking to be subrogated to debtor's major secured lender's rights against debtor's related real estate company and the real estate company's cross guaranty of debtor's debt. The lender was fraudulent, that interest payments made by the debtor to the real estate company were preferential payments, that any debts owed by the debtor to the real estate company should be subordinated to all other unsecured claims, and that unsecured creditors were entitled to be subrogated to the rights of the lender against the real estate company to the full amount of all debtor's payments made to the lender. The Bankruptcy Court, Harold J. Lavenex, Jr., held that: (1) Trustee, who paid the debtor's debt owed to the real estate company, was subrogated to the debtor's rights as a secured creditor against the real estate company; (2) the debtor's guaranty of the real estate company's debt did not constitute a fraudulent transfer that the trustee could avoid, absent proof that the real estate company's cross guaranty of debtor's debt was not of reasonably equivalent value and that debtor was insolvent; (3) except for interest payments made during the 90 days immediately preceding the filing of the Chapter 7 petition, in the absence of proof of debtor's fraudulent intent, the real estate company's debt to the real estate company did not constitute preferential payments; (4) real estate company's unsecured claims against debtor were not required to be subordinated to all other allowed claims; and (5) debtor and the real estate company were not required to be treated as the same entity and, thus, the lender's claim was not required to be satisfied out of the assets of the real estate company.	Trustee, who paid secured debt owed by debtor's related real estate company to debtor's major secured lender under debtor's guarantee of the real estate company's debt, was subrogated to the lender's rights as a secured creditor against the real estate company.	"Is a trustee, who paid secured debt owed by a debtor's related real estate company the debtor's major secured lender under the debtor's guarantee of the real estate company's debt, subrogated to the lender's rights as a secured creditor against the real estate company?"	Subrogation - Memo #955 - C - MLS.docx	R055-00324485-1055-00324486	Condensed SA, Sub	0.86	0	1	1	1	1
1729	State of New Hampshire v. State of Louisiana, 108 U.S. 76	221-134	It is contended, however, that, notwithstanding the prohibition of the amendment, the states may prosecute the suits, because, as the "sovereign and trustee of its citizens," a state is "clothed with the right and faculty of making an imperative demand upon another independent state for the payment of debts which it owes to citizens of the former." There is no doubt but one nation may, if it sees fit, demand of another the payment of a debt owing by the latter to a citizen of the former. Such power well may be claimed by a nation in the exercise of its sovereignty, but it involves also the national powers of levying war and making treaties. As was said in U.S. v. Dickelman, 92 U.S. 524, if a sovereign assumes the responsibility of presenting the claim of one of his subjects against another sovereign, the prosecution will be "as one nation proceeds against another, not by suit in the courts, as of right, but by diplomatic negotiation, or, if need be, by war."	One nation may, if it sees fit, demand of another nation the payment of a debt owing by the latter to a citizen of the demanding nation, such power being recognized as an incident of national sovereignty and involving also the national powers of levying war and making treaties.	"Can one nation, if it sees fit, demand of another nation the payment of a debt owing by the latter to a citizen of the demanding nation?"	020449.docx	LEGASE-00125240-LEGASE-00125241	SA, Sub	0.71	0	0	1	1	1
1740	Repure Shipping, Ltd. v. Allround Fuel Trading B.V., 350 F. Supp. 2d 369	221-142	"Under the principles of international comity, United States courts ordinarily refuse to review acts of foreign governments and defer to proceedings taking place in foreign countries, allowing those acts and proceedings to have extraterritorial effect in the United States." Frain Banker Assoc., Ltd. v. Banco Popular Del Peru, 109 F.3d 850, 854 (2d Cir. 1997). The courts of this circuit have been particularly consistent in practicing comity toward foreign judgments and proceedings. See S.C. v. S.D.N.Y. (2009). Following the Supreme Court's holding in Hilton v. Guyot, courts generally extend comity provided the foreign court had proper jurisdiction and recognition of its judgment or proceeding does not prejudice the rights of United States citizens or violate domestic public policy. Victor v. Seaboard, 558 F.2d 473. The importance of extending comity whenever these prerequisites have been met has only increased as our economy has become increasingly global and dependent upon international trade. The courts of this circuit have consistently held that it is critical to a smooth functioning of business. See Roby v. Corp. of Lloyd's, 996 F.2d 1353, 1362-63 (2d Cir. 1993).	Under the principles of international comity, United States courts ordinarily refuse to review acts of foreign governments and defer to proceedings taking place in foreign countries, allowing those acts and proceedings to have extraterritorial effect in the United States."	"Do United States courts ordinarily defer to proceedings taking place in foreign countries, allowing those proceedings to have extraterritorial effect in the United States?"	020865.docx	LEGASE-00124893-LEGASE-00124895	SA, Sub	0.79	0	0	1	1	1

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1748	United States v. Jones, 207 F. Supp. 343 (76)	63+111	In sum, for an act by a public official to qualify as an "official act" under the Federal Bribery Statute, (1) it must consider, refer, or receive a bribe; (2) the act must be within the official's specific, substantial, and lawful duties; and (3) the act must be performed before the public official performing the act, or before another public official, or is within the specific duties of an official's position, and (2) the public official must make a decision or take action on that act or agree to do so (the "performance" requirement); and (3) the public official must make a decision or take action on that act or agree to do so (the "performance" requirement); and (4) the public official must intend to perform the act. Rather, he must merely agree (explicitly or implicitly) to do so. Also, a different public official position to either exert pressure on the other official or provide advice to that official, "knowing or intending that such a decision will form the basis for an official act." Id. at 2370.	For an act by a public official to qualify as an "official act" under the Federal Bribery Statute, (1) it must consider, refer, or receive a bribe; (2) the act must be within the official's specific, substantial, and lawful duties; and (3) the act must be performed before the public official performing the act, or before another public official, or is within the specific duties of an official's position, and (2) the public official must make a decision or take action on that act or agree to do so (the "performance" requirement); and (3) the public official must make a decision or take action on that act or agree to do so (the "performance" requirement); and (4) the public official must intend to perform the act. Rather, he must merely agree (explicitly or implicitly) to do so. Also, a different public official position to either exert pressure on the other official or provide advice to that official, "knowing or intending that such a decision will form the basis for an official act." Id. at 2370.	What is an official act under the bribery statute?	01.0416.docx	LEGALASE-00126022 LEGALASE-00126023	Condensed SA, Sub	0.53	839 0	15,344 1	14,873 1	21,876 1	9,079 1
1749	United States v. Greer, 958 F. Supp. 531	22+1397	Congress has the power under Article I, Section 8, Clause 10 of the United States Constitution to define and punish felonies committed on the high seas. See United States v. Davis, 905 F.2d at 248 Congress made its intent to reach acts of possession, manufacture, or distribution committed outside the territorial jurisdiction of the United States, 46 U.S.C.App. "1903(h). The only question remaining is whether the due process clause limit the application of the statute to the defendant. The defendant argues that the statute is overbroad and its intent to reach such conduct is a United States would be bound to follow the Congressional direction unless this would violate the due process clause of the Fifth Amendment." United States v. Pinto "Mejia, 720 F.2d 248, 259 (2d Cir. 1983) (quoting Leasco Data Processing Equip. Corp. v. Maxwell, 468 F.2d 1326, 1334 (2d Cir. 1972)).	Congress was constitutionally authorized to give extraterritorial effect to the Maritime Drug Law Enforcement Act (MDLEA) with respect to the defendant's conduct. The defendant argues that the MDLEA with respect to conduct taking place upon the high seas is 46 U.S.C. § 1903.	Is Congress constitutionally authorized to give extraterritorial effect to the Maritime Drug Law Enforcement Act (MDLEA) with respect to conduct taking place upon the high seas?	02.0950.docx	LEGALASE-00125938 LEGALASE-00125939	Condensed SA, Sub	0.75	0 1	1 1	1 1	1 1	1 1
1750	Baker v. Davis, 309 Ky. 709	307A+551	The state presents a rather unusual situation. A plaintiff to delay a remedy sought by another plaintiff to plan in advance. Both parties are generally looked upon as defensive or protective moves. Like a plea of limitation they are looked upon as a shield rather than a sword. As said in 1 Am.Jur. Actions, section 63: "A plaintiff's right to begin a new action on the remedy is not impaired merely by inaction or delay in seeking that remedy, provided he does not delay so long as to be affected by the doctrine of laches or the Statute of Limitations. On the other hand, an action cannot be maintained if it is commenced before the accrual of the cause of action, and the plaintiff is bound to begin a new action as soon as the cause of action accrues. The plaintiff's right to begin a new action on the cause of action, upon proper and timely objection being made, the nonexistence of a cause of action when the suit was started is a fatal defect which cannot be cured by the accrual of a cause pending suit."	As before stated the maintaining (if commenced before accrual of cause) which is sought to be enforced, and such an action should be treated without prejudice to plaintiff's right to begin a new action on accrual of the cause, and, upon proper and timely objection being made, the nonexistence of a cause of action when suit was started is a fatal defect which cannot be cured by accrual of cause pending suit.	Can an action be maintained if it commenced before the accrual of the cause of action sought to be enforced?	00.0691.docx	LEGALASE-00126520 LEGALASE-00126521	SA, Sub	0.6	0 0	0 0	1 1	1 1	
1751	E. Maxwell Int'l v. United States, 36 Fed. Cl. 941	348A+277	In cases involving a legal liability established application process, the taking claim normally does not arise "until after a permit has been sought and denied and the effect of the denial results in economic detriment." Conant v. United States, 12 689, (1987). Plaintiffs are not required to exhaust such procedures if it would be futile to do so. Id. at 693.	For ripeness purposes, in cases involving a legal liability established application process, the taking claim normally does not arise until after a permit has been sought and denied and the effect of the denial results in economic detriment; however, plaintiffs are not required to exhaust such procedures if it would be futile to do so.	"In cases involving a legal liability established application process, does the taking claim arise until after a permit has been sought and denied and the effect of the denial results in economic detriment?"	Eminent Domain- Memo 284- GP.docx	ROSS-00238547 K055-00396648	SA, Sub	0.12	0 0	0 0	1 1	1 1	
1752	City of Mount Dora v. J's Mobile Homes, 579 So. 2d 213	317A+113	When each of two public service utility entities, whether governmental or private, have a legal basis for claim of right to provide similar services in the same territory, the claim of right to provide service in that territory is not exclusive legal right to provide service in that territory without interference from the entity with the later acquired (subsequent) claim of right.	When each of two public service utility entities, whether governmental or private, have a legal basis for claim of right to provide similar services in the same territory, the claim of right to provide service in that territory is not exclusive legal right to provide service in that territory without interference from the entity with the later acquired claim of right.	Does an entity providing a similar service as another in the same territory have an exclusive right to provide service in that territory if the entity had an earlier acquired right?	04.2396.docx	LEGALASE-00126534 LEGALASE-00126535	SA, Sub	0.11	0 0	0 0	1 1	1 1	
1753	Usery v. Barrow, 238 Ala. 67	150D+73	The principle of laches is as follows: "Where, from delay, any conclusion the court may arrive at must at best be conjectural, and the original transaction have become so obscured by lapse of time, loss of evidence, and other causes, that the plaintiff's claim cannot be ascertained with any degree of certainty, and the defendant's position is such that the plaintiff's claim is barred by the doctrine of prescription." Bromberg v. First National Bank, 235 Ala. 226, 178 So. 48, 53, and cases cited. 8 Alabama Digest, Equity p. 448. Key Number Symbol 672. Couson v. Tullison, 226 Ala. 530, 147 So. 635. Dunn v. Ponder, 235 Ala. 283, 178 So. 46.	The principle of "laches" is that complainant will be precluded from relief where, from delay, any conclusion the court may arrive at must at best be conjectural, and the original transactions have become so obscured by lapse of time, loss of evidence, and other causes, that the plaintiff's claim cannot be ascertained with any degree of certainty, and the defendant's position is such that the plaintiff's claim is barred by the doctrine of prescription.	When will a plaintiff by his laches be precluded from relief?	005417.docx	LEGALASE-00126844 LEGALASE-00126845	Condensed Order SA, Sub	0.44	1 1	1 1	1 1	1 1	1 1
1754	Hardin v. First Nat. Bank of Elmwood Place, 67 Ohio App. 213	352+40	It is obvious also, that there is not here involved or considered a situation where the defendant seeks to augment a claim defective at the time it is advanced in the plaintiff's original pleading. That this cannot be done is beyond question. The plaintiff has the same handicap. In the annotation in 125 A.L.R. 612, at p. 613, it is stated: "The rule supported by the overwhelming weight of authority is that a plaintiff who has a claim or demand for relief and a substantial right to it, and who is not barred by action or counterclaim at the time of its commencement, may not by the subsequent acquisition, or perfection of such right or title, remedy the defect so as to succeed in the action."	If a plaintiff or defendant has no valid and subsisting title or right to subject of his action or counterclaim at time of its commencement, he may not, by subsequent acquisition, or perfection of such right or title, remedy the defect so as to succeed in the action.	"If a plaintiff or defendant has no valid and subsisting title or right to subject of his action or counterclaim at time of its commencement, may he remedy the defect so as to succeed in the action?"	000251.docx	LEGALASE-00127145 LEGALASE-00127146	SA, Sub	0.62	0 0	0 0	1 1	1 1	

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	Barbieri v. Mount Sinai Hosp., 284 A.2d 61	41:3-1	Section 10 of the Workers' Compensation Law requires employers to secure compensation for employees who suffer disability or death from injuries arising out of their employment, with certain exceptions not relevant herein. This provision is a means of establishing a no-fault insurance regime protecting employees during their periods of disability arising from work-related injuries (cf., Dorosz v. Green & Seiffer, 92 N.Y.2d 673, 685 N.Y.S.2d 406, 708 N.E.2d 162). For employers, this quasi-contractual financial obligation was intended simply to have been part of the cost of doing business (Westchester Lighting Co. v. Westchester County Small Estates Corp., 278 N.Y. 175, 15 N.E.2d 507). Labor Law "240 (enacted in 1915) was intended to provide a more certain and predictable system of compensation for injured workers (see, e.g., Colonial Sash & Grovel Co., 75 A.D.2d 578, 626 N.Y.S.2d 801). The remedy to the employees as against the employer is limited to filing a Workers' Compensation claim (Conin v. Perry, 244 A.D.2d 448, 664 N.Y.S.2d 123) unless the employer failed to secure compensation insurance ("11). For employees, the statute ensures a swift and sure source of benefits in exchange for the loss of a common-law tort claim for which benefits, including the right to sue, are forfeited (see, e.g., 683 N.Y.S.2d 634, aff'd, 94 N.Y.2d 87, 699 N.Y.S.2d 716, 721 N.E.2d 996).	For employees, workers' compensation statute ensures a swift and sure source of benefits in exchange for the loss of a common-law tort claim for which benefits, potentially, might be greater. McKinney's Workers' Compensation Law § 10.	Does the workers compensation statute ensure employees a swift and sure source of benefits in exchange for the loss of a common-law tort claim for which benefits might be greater?	LEGALASE-00126548-LEGALASE-00126849	SA, Sub	0.83	839 0	15,344 0	1 1	21,876 1	9,079	
1755														
	Persinger v. Peabody Coal Co., 196 W. Va. 707	41:3-1	We begin by examining West Virginia Code "22-2-6 which provides that [an] employer subject to this chapter who shall subscribe and pay into the workers' compensation fund the premiums provided by this chapter or who shall elect to make direct payments of compensation as herein provided shall not be liable to respond in damages at common law or by statute for the injury or death of any employee, however occurring, after so subscribing or electing, and during any period in which such employer shall not be in default in the payment of such premiums or direct payments and shall have complied fully with all other provisions of this chapter. Id. (footnote added) (emphasis added). It is undisputed that the result of the above-mentioned statute is that it provides "statutory immunity from suit for those employers who either subscribe to the West Virginia Workers' Compensation Fund... or elect to be a self-insurer and comply fully with the requirements of the Act." 10 Smith v. Monsanto Co., 822 F.Supp. 327, 329 (S.D.W.Va.1992) (emphasis added). "The Workmen's Compensation Act was designed to remove negligently caused industrial accidents from the common law tort system." Mandoldis v. Elkins Indus. Inc., 161 W.Va. 695, 700, 246 S.E.2d 907, 911 (1978), superseded by statute as stated in Handley v. Union Carbide Corp., 804 F.2d 265 (4th Cir.1986). "The benefits of this system accrue both to the employer, who is relieved from common-law tort liability for negligently inflicted injuries, and to the employee, who is assured prompt payment of benefits." Meadows v. Lewis, 172 W.Va. 457, 469, 307 S.E.2d 625, 638 (1983) (emphasis added).	Benefits of workers' compensation system accrue both to employer, who is relieved from common-law tort liability for negligently inflicted injuries, and to employee, who is assured prompt payment of benefits.	"Do the benefits of the workers' compensation system accrue to both the employer, who is relieved from common-law tort liability for negligently inflicted injuries, and to the employee, who is assured prompt payment of benefits?"	LEGALASE-00126852-LEGALASE-00126853	Condensed SA, Sub	0.87	0 1	1 1	1 1	1		
1756														
	Edward Bull Co. v. Town of E. Granby, 152 Conn. 319	12:4-5	That the court in an action for a declaratory judgment or a writ for injunctive relief will look at the facts existing at the time of trial is more just than unjust. The remedy of a judicial declaration of rights is to inform parties of their rights and duties so that there may be an orderly settlement of their disputes. The dispute should not be settled on the basis of a situation which no longer exists. Also, since zoning regulations are presumed to be for the welfare of the entire community, the mere institution of a legal proceeding to determine the plaintiff's rights should not be allowed to "freeze" his rights and possibly upset the development of a community according to its comprehensive plan.	Zoning regulations are presumed to be for welfare of entire community, and mere institution of legal proceeding to determine rights should not be allowed to "freeze" rights and possibly upset development of community according to its comprehensive plan.	"Since zoning regulations are presumed to be for the welfare of an entire community, should an institution of a legal proceeding to determine rights be allowed to "freeze" rights?"	LEGALASE-00127564-LEGALASE-00127565	SA, Sub	0.64	0 1	0 1	1 1			
1757														
	City of Owatonna v. Chicago, R. I. & P. Ry. Co., 156 Minn. 475	25:0-172	When a court is asked to exercise the extraordinary power of mandamus, it is not limited to a consideration of the facts and conditions as they existed at the time the proceeding was initiated, but should take into consideration the facts and conditions existing at the time it determines whether a peremptory writ should issue. Deener v. Houghton (Minn.), 150 Minn. 75, 186 N.W. 225 (1922).	When a court is asked to exercise the extraordinary power of mandamus, it is not limited to a consideration of facts and conditions as they existed at the time the proceeding was initiated, but should take into consideration the facts and conditions existing at the time it determines whether a peremptory writ should issue.	"In exercising the extraordinary power of mandamus, is the court limited to a consideration of the facts and conditions as they existed at the time the proceeding was initiated, or should it take into consideration the facts and conditions existing at the time it determines whether a peremptory writ should issue?"	ACOS-00328876-ACOS5-00338877	SA, Sub	0.18	0 1	0 1	1 1			
1758														
	Karavados v. Brown Derby, 99 Ohio App. 3d 548	41:3-1	In the context of workers' compensation matters, "the definition of and principles governing torts apply, so one may consider that the proximate cause of an event is that which in a natural and continuous sequence, unbroken by any new, independent cause, produces the event and without which the event would not have occurred. Oswald v. Connor (1985), 16 Ohio St.3d 38, 42, 116 Ohio St.3d 523, 476 N.E.2d 658, 662;" Harris v. E. Ohio Gas Co. (June 30, 1994), Lake App. No. 93-1-030, 106 Ohio St.3d 1, 894, 946, 948 App. No. 93-1-030, 106 Ohio St.3d 1, 895, 946, 948 App. No. 93-1-030.	In context of workers' compensation matters, the definition of and principles governing torts apply, so one may consider that proximate cause of event is that which in natural and continuous sequence, unbroken by any new, independent cause, produces event, and without which that event would not have occurred.	How principles governing torts do apply in the context of workers compensation matters?	LEGALASE-00127584-LEGALASE-00127585	SA, Sub	0.4	0 1	0 1	1 1			
1759														

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1760	United States v. Woods, 21 M.J. 836	2584-500	The President has both constitutional and statutory authority to promulgate rules and regulations for the covered personnel. See, e.g., 5 U.S.C. § 4205 (United States Code, 42 U.S.C. § 4205). The President's authority is not inconsistent with congressional statutes, they are within scope of his authority as Commander in Chief.	The President has both constitutional and statutory authority to promulgate rules and regulations for the covered personnel. See, e.g., 5 U.S.C. § 4205 (United States Code, 42 U.S.C. § 4205). The President's authority is not inconsistent with congressional statutes, they are within scope of his authority as Commander in Chief.	Do military rules prescribed by the President come within the scope of this authority as commander in chief if they are inconsistent with the congressional statutes?	00297.docx	LEGALASE-00128579-LEGALASE-00128580	SA, Sub	0.75	839	15,344	14,873	21,876	9,079
										0	0	1	1	
1761	Leisure v. Leisure, 605 N.E.2d 755	413-1	In determining whether worker's compensation benefits are a personal asset or a marital asset, we examine the purpose of a worker's compensation act. The federal worker's compensation system, created for similar policy reasons as the state worker's compensation system, gives employees a quicker and more certain relief than a common law tort action. U.S. v. Demko (1960), 386 U.S. 443, 15 L. Ed. 2d 382, 383, 17 Fed. Cl. 420 (1960). Likewise, the Indiana Worker's Compensation Act was created to remove obstacles and insure a more certain remedy for the injured worker. North v. U.S. Steel Corp. (1974), 7th Cir., 495 F.2d 810, 813; Frampton v. Central Ind. Gas Co. (1973), 260 Ind. 249, 251, 297 N.E.2d 425, 427. Both the federal and Indiana acts provide a statutory right to compensation for the employee in exchange for limiting the liability of the employer to that provided by the particular act. Demko, 386 U.S. at 443, 15 L. Ed. 2d 382, 383, 17 Fed. Cl. 420 (1960). The federal act provides for a "no-fault" awarding of worker's compensation, however, is not identical to a personal injury recovery. The Worker's Compensation Act does not contemplate a recovery for pain and suffering. See Kinke v. General Tire & Rubber Co. (1956), 235 Ind. 292, 600, 134 N.E.2d 212, 216.	Federal worker's compensation system, created for similar policy reasons as state worker's compensation system, gives employees quicker and more certain relief than common-law tort action.	"Does the federal workers compensation system, created for similar policy reasons as a states workers compensation system, give employees quicker and more certain relief than common-law tort actions?"	007715.docx	LEGALASE-00128720-LEGALASE-00128721	SA, Sub	0.86	0	0	1	1	
										0	0	1	1	
1762	Onyiahwa v. FedEx Ground Package Sys., 731 F. Supp. 2d 987	2571-134(6)	The COA was also substantively unreviewable. A tort judicial provision is substantively unreviewable when the contractual terms unreasonably favor the drafter. Woman v. FedEx Ground Package Sys., Inc., 76 Pa. D. & C.4th 292, 300 (Pa. Com.Pl. 2005). "Numerous factors may make an arbitration provision substantively unconscionable, including severe restrictions on discovery, high arbitration costs borne by one party, limitations on remedies, and curtailed judicial review. Essentially, an arbitration provision is substantively unconscionable if it creates an imbalance in procedure that favors one party over another." Ostroff, 433 P.2d 1019, 1020 n.4 (Cal. 1968). The COA was substantively unreviewable arbitration provisions in the COA that unreasonably favor FedEx.	Numerous factors may make an arbitration provision substantively unconscionable, including severe restrictions on discovery, high arbitration costs borne by one party, limitations on remedies, and curtailed judicial review. Essentially, an arbitration provision is substantively unconscionable if it creates an imbalance in procedure that favors one party over another. 5 U.S.C.A. 552, 4.	What are the factors that make an arbitration provision substantively unconscionable?	007298.docx	LEGALASE-00129039-LEGALASE-00129040	SA, Sub	0.49	0	0	1	1	
										0	0	1	1	
1763	Zechman v. Merrill Lynch, Pierce, Fenner & Smith, 742 F. Supp. 1559	2571-140	Where one term of an arbitration agreement has failed, the decision between substituting a new term for the failed provision and refusing to enforce the agreement altogether turns on the intent of the parties "at the time the agreement was executed, as determined from the language of the agreement and the surrounding circumstances." See, e.g., Chaitanogga v. 333 Sea Bio Chaitanogga Maldives Union, Local No. 92 v. Chaitanogga News "Free Press, 524 F.2d 1305, 1315 (6th Cir. 1975), overruled on other grounds, Bacashhua v. U.S. Postal Service, 859 F.2d 402 (6th Cir. 1988). To determine this intent, courts look to the "essence" of the arbitration provision: to the extent the court can infer that the essential term of the provision is the agreement to arbitrate, that agreement will be enforced despite the failure of one of the terms of the bargain. See Chutanogga v. 333 Sea Bio Chaitanogga Maldives Union, Local No. 92 v. Chaitanogga, 349 F.2d 16 (E.D.N.Y., 1965), 448 F.2d 164 (2d Cir. 1972). If, on the other hand, it is clear that the failed term is not an ancillary logistical concern but rather is as important a consideration as the agreement to arbitrate itself, a court will not sever the failed term from the rest of the agreement and the entire arbitration provision will fail. See Tanian Oil, 817 F.2d 326. In construing arbitration agreements, courts are guided by the principle.	Where one term of arbitration agreement has failed, decision between substituting a new term for the failed provision and refusing to enforce the agreement altogether turns on the intent of the parties at the time the agreement was executed, as determined from the language of the contract and the surrounding circumstances.	Do courts look to the intent of the parties in deciding whether to substitute a new term for a failed provision or refusing to enforce the agreement altogether?	007320.docx	LEGALASE-00129063-LEGALASE-00129064	Condensed, SA	0.77	0	1	0	1	
										0	1	0	1	
1764	Perritt v. Albertsons, 887 Mont. 102	3076A-502	It is clear that the granting of a motion for voluntary dismissal under Rule 41(a)(2) is within the sound discretion of the trial court and is reviewable only for an abuse of discretion. Armstrong v. Froste Co., 44th Cir. 1971, 453 F.2d 914, 916; La-Ton Supply Co. v. Fruelhard Trailer Division, Fruelhard Corp. (5th Cir. 1971), 444 F.2d 1366, 1368. It is not a matter of right. In using its discretion, the court should consider the expense and inconvenience that will result to the defendant, other prejudicial consequences that will result to the plaintiff, and the interests of justice. Voluntary dismissal may make the defendant reasonably whole. Barron and Holtorf, Federal Practice and Procedure, § 912 at 116-117.	In using its discretion in determining whether to grant motion for voluntary dismissal, court should consider expense and inconvenience that will result to defendant, other prejudicial consequences and whether terms and conditions attached to the dismissal may make defendant reasonably whole. M.R.Civ.P., rule 41(a), (a)(2).	"In ruling on motion for voluntary dismissal by order of court, should a district court consider the expense and inconvenience that will result to a defendant?"	025918.docx	LEGALASE-00129490-LEGALASE-00129491	SA, Sub	0.53	0	0	1	1	
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ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Between Original Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
1769	Silver v. Rivtuo-Siller, 129 S.W.3d 453	307A-44.1	We review the trial court's admission of evidence relating to the attempted agreement as to the attempted agreement between the trial court's actions in the context of a response to non-compliance with pre-trial discovery or other pre-trial orders, we consider whether, under the totality of the circumstances, the challenged act has resulted in prejudice or unfair surprise. Ellis v. Union Electric Company, 729 S.W.2d 71, 74-75 (Mo.App. E.D.1987). We keep in mind that "[e]xercise of this discretion should be directed toward the accomplishment of fundamental fairness and the avoidance of unfair surprise." Id. at 76, 436 (Mo. Ct. App. 1994).	Exercise of trial court's discretion concerning response to non-compliance with pretrial discovery or other pretrial orders should be directed toward the accomplishment of fundamental fairness and avoidance of unfair surprise.	Should the exercise of a trial court's discretion concerning a response to non-compliance with pretrial discovery or other pretrial orders be directed toward the accomplishment of fundamental fairness and avoidance of unfair surprise?	025785.docx	LEGALISE-00130445-LEGALISE-00130446	Condensed, SA, Sub	0.7	839	15,344	14,873	21,876	9,079
	Cheson v. Jones-Schultz, 904 N.E.2d 286	307A-749.1	"Indiana discovery rules are specifically designed to avoid surprise and [a] trial by ambush." Outback Steakhouse of Florida, Inc. v. Markey, 856 N.E.2d 65, 76 (Ind.2006). A pretrial order is to "limit the issues for trial to those not disposed of by admission or agreement of counsel, and such order when entered shall control the subsequent course of action, unless modified thereafter to prevent manifest injustice." Ind. Trial Rule 16(f). The trial court's pretrial order in this case was not modified thereafter. On appeal, we are asked to review the trial court's pretrial order. In 1988 (Ind. Ct. App.2008) trans. denied(2007). "In deciding whether to permit a modification from a pretrial order, "the trial court considers both the danger of surprise or prejudice to the opponent, and the goal of doing justice to the merits of the claim." Id. (quoting Dub v. Dub, 629 N.E.2d 873, 875 (Ind.Ct.App.1994), trans. denied).	A pretrial order is to limit the issues for trial to those not disposed of by admission or agreement of counsel, and such order when entered shall control the subsequent course of action, unless modified thereafter to prevent manifest injustice. Trial Procedure Rule 16(f).	Does a pretrial order control the subsequent course of an action unless modified by admission or agreement of counsel, and such order when entered shall control the subsequent course of action, unless modified thereafter to prevent manifest injustice.	025890.docx	LEGALISE-00130481-LEGALISE-00130482	SA, Sub	0.71	0	0	1	1	1
1770	King v. Thompson, 186 Ga. App. 12	307A-749.1	Defendants Trawick and Hughes argue the judgment against them should be reversed because they were never properly made parties to the action. Parties may be added to a lawsuit only by order of the court. O.C.G.A. § 9-1-21. The record shows plaintiff failed to obtain leave of the court to add defendants Trawick and Hughes. However, the record also shows this pretrial order limits the issues for trial to those not disposed of by admissions or agreements of counsel. The order, when entered, controls the subsequent course of action. The trial court's pretrial order is not manifestly unjust. O.C.G.A. § 9-1-16(b). If a claim or issue is omitted from the order, it is waived." (Cts. and punctuation omitted.) Long v. Marion, 257 Ga. 431, 433, 360 S.E.2d 255 (1987). This rule applies to the issue or defense of failure of the opposite party to obtain leave of court to add a party by amendment to an existing suit. CIT Investment Co. v. Automated Graphics Unlimited, 175 Ga.App. 353, 333 S.E.2d 136 (1985) (where defendant was found not to have waived his defense prior to trial of the case where a pretrial order was entered.)	Pretrial order controls subsequent course of action unless modified at trial to prevent manifest injustice. If claim or issue is omitted from pretrial order, it is waived. O.C.G.A. § 9-1-16(b).	Does a pretrial order control the subsequent course of action unless modified at trial to prevent manifest injustice, if claim or issue is omitted from claim or issue is omitted from the order is it waived?	025935.docx	LEGALISE-00131016-LEGALISE-00131027	SA, Sub	0.84	0	0	1	1	1
	King v. Mayor & Council of Rockville, 249 Md. 243	307A-717.1	We find no error and no prejudice in requiring Mrs. King to go to trial. Under Maryland Rule 527 and the decisions of this Court the granting or refusing of a continuance is in the sound discretion of the trial court and an important factor in the exercise of this discretion is whether the continuance would be for the benefit of the party seeking it. In this case, the fact that Mrs. King did not present the affidavits specified by Rule 527(c), we think it clear that Judge Shook's determination that Mrs. King might well never be able to appear in court or, at least in may be inferred, might never choose to appear was fully justified by consideration of the history of the case set out above. If there were error in compelling trial, there was no prejudice since Mrs. King's expert witnesses based their testimony on all the facts and data that Mrs. King had given them as to the history of the case. The trial court's decision to grant a continuance of value reflecting her theories that they might not have been permitted to give had she been present.	Important factor in exercise of court's discretion to grant continuance is whether witness who is unavailable will be able to be present within reasonable time. Maryland Rules, Rule 527.	Is an important factor in exercise of court's discretion to grant continuance is whether witness who is unavailable will be able to be present within reasonable time?	Pretrial Procedure - Memo # 2046 - C-VP.docx	ROSS-00288074-ROSS-00388075	Condensed, SA, Sub	0.83	0	1	1	1	1
1772	Florida Marine Enterprises v. Bailey, 532 So. 2d 649	307A-749.1	Squarely places decisions regarding the testimony of improperly disclosed witnesses within the broad discretion of the trial judge, who is vested with the interpretation and enforcement of any pretrial order. mandating that the trial court's pretrial order be enforced. The trial court's pretrial order is to achieve the orderly and efficient administration of justice, fair to all parties. In exercising its discretion to strike witnesses not properly disclosed upon pretrial order, the trial court may consider such factors as: whether use of the undisclosed witness will prejudice the objecting party; the objecting party's ability to cure the prejudice or its independent knowledge of the witnesses' evidence; the calling party's knowledge of the witnesses' evidence; the trial court's knowledge of the possible disruption of the orderly and efficient trial of the case.	Except in cases of clear abuse of discretion prejudicial to affected party, circuit courts must be allowed to enforce pretrial orders to achieve orderly and efficient administration of justice, fair to all parties.	"Can circuit courts be allowed to enforce pretrial orders to achieve orderly and efficient administration of justice, fair to all parties?"	025511.docx	LEGALISE-00130729-LEGALISE-00130730	SA, Sub	0.77	0	0	1	1	1
1773														

Application of

ROW	Judicial Opinion	WIKS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
1779	United States v. Bailey, 444 U.S. 394	151+11	We need not decide whether such evidence as that submitted by respondents was sufficient to raise a jury question as to their initial culpability. This is because we decline to hold that respondents' failure to call for a retrial of the case was a tactical decision. The initial escape could be affirmatively justified. On the contrary, several considerations lead us to conclude that, in order to be entitled to an instruction on duress or necessity as a defense to the crime charged, an escapee must first offer evidence justifying his continued absence from custody as well as his initial departure and that an indispensable element of such an offer is testimony of a bona fide effort to surrender or return to custody as soon as the claimed duress or necessity had lost its coercive force.	To be entitled to instruction on duress or necessity as a defense to charge of escape, escapee must offer evidence justifying his continued absence from custody as well as his initial departure, and indispensable element of such an offer is testimony of a bona fide effort to surrender or return to custody as soon as claimed duress or necessity has lost its coercive force. 18 U.S.C.A. § 751(a).	"If a defendant fails to present sufficient evidence of an affirmative defense, does the court have to instruct the jury to consider that defense?"	011365.docx	LEGALCASE-00133190- LEGALCASE-00133191	SA, Sub	0.52	839 0	15,344 0	14,873 1	21,876 1	9,029
1780	United States v. Wright, 665 F.3d 560	63+111	An honest services fraud prosecution for bribery requires the factfinder to determine two things: (1) it must conclude that the payor provided a benefit to a public official intending that he will thereby take favorable official acts that he would not otherwise take; and (2) it must conclude that the official accepted those benefits intending, in exchange for such acceptance, to take official acts that would be to the disadvantage of both parties may be inferred from circumstantial evidence. 18 U.S.C.A. § 1346.	An honest services fraud prosecution for bribery requires the factfinder to determine two things: (1) it must conclude that the payor provided a benefit to a public official intending that he will thereby take favorable official acts that he would not otherwise take; and (2) it must conclude that the official accepted those benefits intending, in exchange for such acceptance, to take official acts that would be to the disadvantage of both parties may be inferred from circumstantial evidence. 18 U.S.C.A. § 1346.	What are the questions that the factfinder needs determine in an honest services fraud prosecution for bribery?	011465.docx	LEGALCASE-00133113+ LEGALCASE-00133120	SA, Sub	0.44	0 0	1 1	1 1	1 1	1
1781	Budget Charge Accounts v. Peters, 213 Ga. 17	30+813	No cause of action is stated in a petition which states mere legal conclusions of conspiracy, collusion, and fraud with no facts alleged upon which to base them except general and loose allegations consisting of statements without facts upon which the conclusions are based. Green v. Green, 182 S.E. 2d 315; Fowler v. Southern Airlines, 132 Ga. 845, 16 S.E. 2d 697.	A petition which states mere legal conclusions of conspiracy, collusion, and fraud with no facts alleged upon which to base them except general and loose allegations consisting of statements without facts upon which the conclusions are based, does not state a cause of action to cancel loan interest (to restrain assignee of loan deed) from selling property and deed. (to restrain assignee of loan deed) from selling property and deed.	"Is a cause of action stated in a petition which states mere legal conclusions of conspiracy, collusion, and fraud without alleging conclusions of conspiracy, collusion, and fraud without alleging facts?"	Pleading - Memo2 286 - RMM.docx	LEGALCASE-00022641- LEGALCASE-00022642	Condensed SA, Sub 0.03	0 0	1 1	1 1	1 1	1 1	1
1782	Country Club Home v. Harder, 228 Kan. 756	30+3107	It is apparent from the transcript of the pretrial hearing and the pretrial order prepared by defendant-appellant that all parties acquiesced in the procedure to be followed in presenting the case for decision of the court. When a pretrial order is agreed on by the parties and followed by the court in deciding the issues as set forth in the order, the parties have acquiesced in the procedure to be followed in presenting the case for decision of the court when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice. K.S.A. 60-216; Kleibrink v. Missouri-Kansas Teles. Bailroad Co., 224 Kan. 437, 442, 581 P.2d 372 (1978). We have examined the record of the case and find the personal attack of the Secretary against the trial judge is unjustified and in poor taste. Obviously the charges of bias, prejudice and manifest injustice come more as a result of the adverse decision than from any improper action on the part of the judge.	When pretrial order is agreed on by parties and followed by trial court in deciding issues as set forth in order, parties have acquiesced therein and controls subsequent course of action unless modified at trial to prevent manifest injustice. Rules of Civil Procedure, K.S.A. 60-216.	Does a pretrial order entered by court control subsequent course of action?	027142.docx	LEGALCASE-00133322- LEGALCASE-00133323	Condensed SA, Sub 0.64	0 0	1 1	1 1	1 1	1 1	1
1783	USD Comm'n's v. Lone Wolf Pub. Grp., 124 N.C. App. 642	307A+517.1	This broad limitation on the trial court's power to enter orders after a voluntary dismissal does not extend so far, however, as to bar the trial court from awarding attorney's fees pursuant to Rule 11(a) or G.S. 6-21.5. Where the plaintiff's now dismissed action was frivolously filed on or after October 1, 1993, the trial court may award attorney's fees pursuant to Rule 11(a) or N.C. 644, 664, 412 S.E.2d 327, 338 (1993). In the Rule 41(a) context, we recognize that a motion for attorney's fees pursuant to Rule 11(a) or G.S. 6-21.5 is not a continuation of adversary proceedings. Id. Those motions have a life of their own and they address the propriety of the adversary proceedings that have previously occurred in the case without regard to whether the adversary proceedings in question are continuing when the motion is made. In this case, the plaintiff's motion for attorney's fees could properly be considered and adjudicated independent of the court's attorney's fees pursuant to Rule 11(a) and G.S. 6-21.5.	Voluntary dismissal does not bar trial court from awarding attorney's fees where dismissed action was frivolously filed or maintained in absence of justifiable issue. G.S. 6-21.5; Rules Civ. Proc., Rule 11(a); G.S. 1A-1.	Does a voluntary dismissal bar a trial court from awarding attorney's fees where the dismissed action was frivolously filed or maintained in absence of justifiable issue?	028283.docx	LEGALCASE-00133648- LEGALCASE-00133649	SA, Sub	0.77	0 0	1 1	1 1	1 1	1
1784	Scarrano v. Pub. Sch. Employees' Ret. Bd., 68 A.3d 375	63+111	Section 4701 provides that a public official is guilty of bribery if he accepts or agrees to accept from another any pecuniary benefit as consideration for a reward or reward in connection with any business, transaction, or series of transactions. Thus, the essential elements, to prove the elements of bribery beyond a reasonable doubt, Section 666(a)(1)(B) provides that a person is guilty of bribery if the government proves beyond a reasonable doubt that the public official corruptly accepted or agreed to accept anything of value from any person, intending to be influenced or rewarded in connection with any business, transaction, or series of transactions. Thus, the essential elements, to prove the elements of bribery beyond a reasonable doubt, Section 666(a)(1)(B) provides that a person is guilty of bribery if the government proves to accept a benefit or reward in return for some action by the official.	For public official to be found guilty of bribery for accepting or agreeing to accept from another any pecuniary benefit as consideration for a recommendation, public official must have acted intentionally, knowingly, or recklessly. 18 Pa.C.S.A. § 4701.	"Is it essential to show that the public official acted intentionally, knowingly, or recklessly, to be found guilty of bribery for accepting or agreeing to accept from another any pecuniary benefit as consideration for a recommendation?"	011230.docx	LEGALCASE-00134072- LEGALCASE-00134073	SA, Sub	0.73	0 0	1 1	1 1	1 1	1
1785	State ex rel. Johnson v. Circuit Court of Cook County, 61 Wn. 2d 1	307A+69.1	It is only a question of time when the court procedure of this state will be modernized to include rules governing the use of audio-video recordings adopted to include rules governing the use of audio-video recordings adopted to include rules governing the use of audio-video recordings adopted permanent rules. We think the trial court should have the discretion to allow audio-video recordings of depositions of witnesses to be made and admitted in evidence in addition to the stenographic and transcribed recordings now provided for in our statutes. The court in its supervisory power is willing to grant the trial court the discretion to admit such recordings in the interest of justice until such time as this court can make more extensive rules.	Trial court has the discretion to allow audio-video recordings of depositions of witnesses to be made and admitted in evidence in addition to the stenographic and transcribed recordings provided for in our statutes. W.S.A. 807.019, 807.101; Fed. Rules Civ. Proc. rule 30(b)(6), 28 U.S.C.A.	Does a trial court have the discretion to allow audio-video recordings of depositions of witnesses to be made and admitted in evidence in addition to the stenographic and transcribed recordings provided for in our statutes?	Pretial Procedure - Memo # 2524 - C - Ed.docx	ROSS-003590326-ROSS-00290027	SA, Sub	0.6	0 0	1 1	1 1	1 1	1

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1791	Marlowe v. Lott, 222 Ga. App. 679	307A+486	The trial court's order states, inter alia, "Plaintiff had a total of 42 days to file an attorney for the sake of withdrawal of his first action and the plaintiff has not done so." The court then goes on to state, "The court will allow him to withdraw his admissions." Exculpable neglect is not an element of the standard for withdrawal of admissions set forth in OCGA § 9-11-36(b). See Moore Ventures Limited Partnership v. Slack, 153 Ga.App. 215, 219, 264 S.E.2d 725. There is a two-pronged test to be employed when considering a motion to withdraw admissions: "A court may grant a motion to withdraw (1) when the presentation of the merits will be subverted thereby and (2) the party obtaining the admission fails to exercise due diligence in presenting the merits." Emphasis on the action or defense on the merits." Emphasis supplied. In re South Properties v. Contractor Exchange, 199 Ga.App. 726, 727(1), 405 S.E.2d 764. "If the motion satisfies the court on the first prong, the burden is on the respondent to satisfy the second prong." Id. at 728, 405 S.E.2d 764. Both prongs must be established, pursuant to the standard provided in OCGA § 9-11-36(b).	Court may grant motion to withdraw admissions of fact when presentation of merits will be subverted thereby and party obtaining admission is not diligent in presenting the merits. O.C.G.A. § 9-11-36(b).	Can a court grant a motion to withdraw admissions of fact when a party obtaining admissions fails to satisfy a court that the party is not diligent in presenting the merits by filing a proper motion on his action or defense on merits. O.C.G.A. § 9-11-36(b)?	02047.docx	LEGALSE-00134387-LEGALSE-00134288	SA, Sub	0.78	839	15,344	14,873	21,876	9,029
1792	Approximately \$14,980.00 v. State, 261 S.W.3d 182	180D+104(1)	Here, Rule 23a entitled Rule 23a to an opportunity to present evidence of non-receipt, and Rule 3a(1) requires that conflicts between local rules and the Rules of Civil Procedure be resolved in favor of the Rules of Civil Procedure. Moreover, due process requires that a trial court consider, absent evidence of flagrant bad faith or callous disregard for the rules, a motion to strike deemed admissions that are merits-preclusive. Id. at 875. The deemed admissions in this case were merits-preclusive, and there is no evidence of flagrant bad faith or callous disregard for the rules. Therefore, applying our holding from callous or callous disregard for the rules, and due process required that court consider, absent evidence of flagrant bad faith or callous disregard for the rules, a motion to strike deemed admissions that are merits-preclusive. U.S.C.A. Const. Amend. 14; Vernon's Ann. Texas C.C.P. art. 59.01, Rules 3a(1), 23a; Vernon's Ann. Texas C.C.P. art. 59.01.	Trial court erred when it relied on local court rules in refusing to consider property owner's evidence regarding non-receipt of service of State's requests for admissions in seizure and forfeiture proceeding under the Code of Criminal Procedure. Rule of Civil Procedure governing methods of service entitled owner to opportunity to present evidence of non-receipt, conflicts between local rules and the Rules of Civil Procedure were merits-resolved in favor of the Rules, the deemed admissions were merits-preclusive, and there is no evidence of flagrant bad faith or callous disregard for the rules, and due process required that court consider, absent evidence of flagrant bad faith or callous disregard for the rules, a motion to strike deemed admissions that are merits-preclusive. U.S.C.A. Const. Amend. 14; Vernon's Ann. Texas C.C.P. art. 59.01, Rules 3a(1), 23a; Vernon's Ann. Texas C.C.P. art. 59.01.	"Should a trial court permit withdrawal of merits-preclusive, deemed admissions if the record contains no evidence of flagrant bad faith or callous disregard for the rules?"	02081.docx	LEGALSE-00134359-LEGALSE-00134560	Condensed SA, Sub	0.1	0	1	1	1	1
1793	Gregory v. KA Corp. v. STPC Partners, 410 F. Supp. 2d 1268	257+205	"Under the FAA, upon motion of a party, district court must compel arbitration of all claims subject to arbitration." American Arbitration Association v. Makarewicz, 122 F.3d 936, 940 (11th Cir. 1997) (citations omitted). On the other hand, "the FAA does not require parties to arbitrate when they have not agreed to do so, nor does it prevent parties who do agree to arbitrate from excluding certain claims from the scope of their arbitration agreement; because parties are free to structure their arbitration agreements as they see fit, they may limit by contract the issues which they will arbitrate." 9 U.S.C.A. § 1 et seq.	Under the Federal Arbitration Act (FAA), upon motion of a party, district court must compel arbitration of all claims subject to arbitration, but on the other hand, the FAA does not require parties to arbitrate when they have not agreed to do so, nor does it prevent parties who do agree to arbitrate from excluding certain claims from the scope of their arbitration agreement; because parties are free to structure their arbitration agreements as they see fit, they may limit by contract the issues which they will arbitrate. 9 U.S.C.A. § 1 et seq.	Can parties do a within time agreement limit by a contract the issues that they will arbitrate?	007531.docx	LEGALSE-00135291-LEGALSE-00135793	SA, Sub	0.13	0	0	1	1	1
1794	Matter of Wong, 252 Mont. 111	15A+421	The City of Billings argues that the Police Commission's denial of the continuance was not an abuse of discretion. Wong argues that the City of Billings overlooked the hardship that the denial of the continuance caused him. Seeking a continuance due to lack of representation does not ensure the grant of a continuance. Gruenewald v. Missouri Pacific Railroad Co., 18th Cir. 97-291, 111 F.2d 666, in making its decision on a requested continuance, the court considered the hardship to the party seeking the continuance. 17 Am. Jur. 2d * 23. If the party has not acted diligently in procuring representation, a tribunal does not abuse its discretion in denying the continuance.	In making decision on request for continuance due to lack of counsel, court or agency must assess whether party petitioning for continuance has acted diligently in seeking counsel.	"In making a decision on a request for continuance due to lack of counsel, should a court or agency assess whether party petitioning for continuance has acted diligently in seeking counsel?"	020237.docx	LEGALSE-00135479-LEGALSE-00135480	Condensed SA	0.78	0	1	0	1	1
1795	Martin v. Wyatt, 243 Ga. App. 31	307A+716	Nothing in this record shows that any of these criteria for granting a continuance were not met. The record shows that the City of Billings overlooked the hardship that the denial of the continuance caused him. Seeking a continuance due to lack of representation does not ensure the grant of a continuance. Gruenewald v. Missouri Pacific Railroad Co., 18th Cir. 97-291, 111 F.2d 666, in making its decision on a requested continuance, the court considered the hardship to the party seeking the continuance. 17 Am. Jur. 2d * 23. If the party has not acted diligently in procuring representation, a tribunal does not abuse its discretion in denying the continuance.	Continuance because of the absence of counsel are not favored, and a party petitioning for continuance must show that it has acted diligently in seeking counsel. O.C.G.A. § 9-10-155.	"The continuance because of the absence of counsel is not favored, and a party petitioning for continuance must show that it has acted diligently in seeking counsel. O.C.G.A. § 9-10-155, particularly since the matter rests within the sound discretion of the trial judge?"	020311.docx	LEGALSE-00135422-LEGALSE-00135448	SA, Sub	0.83	0	1	1	1	1

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	Robertson-Ryan & Assoc. v. Pohhammer, 112 Wis. 2d 583	307A+716	Furthermore, there was a reasonable basis for the court's decision. This court has held that where there is no good cause for a defendant's absence from trial, a motion to continue the case on that basis may properly be denied. Schweiter v. Dopple, 195 Wis. 341, 243, 248 N.W. 188 (1928). Allis and Others v. The Meadow Spring Distilling Co., 67 Wis. 16, 21, 29 N.W. 543 (1886). This is particularly true when the real purpose in moving for a continuance is to delay the trial. Estate of Hatten, 233 Wis. 256, 263, 289 N.W. 600 (1940). In the instant case the trial court was not satisfied that there was good cause for Pohhammer's absence. The record indicates that both the court and defense counsel informed Pohhammer that the case had been taken to trial for immediate trial. Nevertheless, Pohhammer left and did not return. Based upon these facts, the trial court concluded that Pohhammer purposely absented himself to avoid trial. The court reaffirmed this conclusion in denying Pohhammer's motion for a new trial. Although Pohhammer submitted an affidavit which stated that, because of a hearing disorder, he did not hear or understand that the trial was to be held that day, the court noted that he never explained what he thought was going to happen to his case.	Where there is no good cause for defendant's absence, a motion to continue the case on that basis may properly be denied particularly when the real purpose in seeking a continuance is to delay trial.	"Where there is no good cause for defendant's absence, may a motion to continue the case on that basis properly be denied particularly when the real purpose in seeking a continuance is to delay trial?"	PCSS-002289733-0055-003289734		Condensed, SA, Sub	0.84	839	1	14,873	21,876	9,079
1796										0	1	1	1	1
	Grynberg v. Kriffin, 134 P.3d 563	307A+483	When a party fails to respond in a timely way to a request for admission, it admits the relevant subject matter of the request. Lionelle v. S.E. Colo. Water Conservancy Dist., 676 P.2d 1162, 1167 (Colo.1984); Cox v. Pearl Inv. Co., 188 Colo. 67, 72, 450 P.2d 60, 62 (1969); Engel v. Engel, 502 P.2d 442, 446 (Colo.App.1975). These admissions may then be used to support summary judgment. In re Estate of Johnson, 199 Colo. 1, 589 P.2d 1041, 593 P.2d 1043, 594 P.2d 1044 (Colo.App.1975). See also Tradman & Shreve, Inc. v. Mead & Mount Constr. Co., 163 Colo. 308, 430 P.2d 74 (1967).	When a party fails to respond in a timely way to a request for admissions, thus admitting the relevant subject matter of the request, these admissions may then be used to support a summary judgment. Rules Civ.Proc., Rule 36.	"When a party fails to respond in a timely way to a request for admissions, thus admitting the relevant subject matter of the request, may these admissions then be used to support a summary judgment?"	029708.docx	LEGAL/ASE-00135437 LEGAL/ASE-00135438	Condensed, SA, Sub	0.61	0	1	1	1	1
1797										0	0	1	1	
	P.R.S. Int'l v. Shred Pak Corp., 232 Ill. App. 3d 956	307A+483	In our opinion, the trial court may not consider controverted ultimate facts and legal conclusions just because a party has failed to respond within the 28 day statutory period. To permit a party to escape litigation in such a manner would thwart the purpose Rule 2.06 and invite parties to ignore the rule which is to obviolate the difficulty involved regarding purpose of the rule which is to obviolate the difficulty involved regarding proof of evidence which is incontrovertible. Wintersteen v. National Coasterage & Woodware Co., 361 Ill. 195, 197 N.E. 578 (1935). Accordingly, we hold that the trial court could not consider disputed ultimate facts and conclusions of law included in Shred Pak's request to admit when considering Shred Pak's motion for summary judgment.	On discovery request to admit, court may not consider controverted ultimate facts and legal conclusions just because party has failed to respond to request within 28 day statutory period. Sup.Ct.Rules, Rule 2.06.	"On discovery request to admit, may a court not consider controverted ultimate facts and legal conclusions just because a party has failed to respond to the request within the 28 day statutory period?"	029910.docx	LEGAL/ASE-00135595 LEGAL/ASE-00135596	SA, Sub	0.75	0	0	1	1	
1798										0	1	0	1	
	Dell Dev. Corp. v. Best Indus. Unit Supply Co., 743 S.W.2d 302	30+3239	The decision of whether to grant a motion for continuance, or to continue a case sua sponte, rests within the discretion of the trial court. The action of this trial court will not be disturbed unless the record discloses a clear abuse of discretion. Village v. Carter, 711 S.W.2d 624, 626 (Tex.1986). In civil cases in which the absence of counsel has been urged as grounds for a continuance or new trial, courts have required a showing that the party failed to appear was excusable, that the party was diligent in its negligence. Condehelen v. Gendebien, 668 S.W.2d 905, 906 (Tex.App. Houston 14th Dist.1984, no writ), citing State v. Crank, 666 S.W.2d 931, 94 (Tex.1984).	Decision of whether to grant motion for continuance, or to continue case sua sponte, rests within discretion of trial court; action of trial court will not be disturbed unless record discloses clear abuse of discretion.	"Does the decision of whether to grant a motion for continuance, or to continue case sua sponte, rest within the discretion of a trial court?"	030502.docx	LEGAL/ASE-00135776 LEGAL/ASE-00135777	Condensed, SA	0.68	0	1	0	1	
1799										0	1	0	1	
	Acorn Iron Works v. Auditor Gen., 295 Mich. 143	371+1001	The state board of tax administration from time to time has changed its construction and method of enforcing the sales tax law as it affects building trade transactions; but in this connection it is sufficient to note that liability for payment of the sales tax is controlled by statute. It cannot be said that the board's construction of the law is arbitrary or capricious. It can act only within express authority conferred thereby, the scope of such laws cannot be extended by implication or forced construction and language, if dubious, is not resolved against the taxpayer." (Syllabus) I. B. Simpson, Inc., v. O'Hara, 277 Mich. 55, 268 N.W. 809.	Tax collectors can act only within legislative enactment, and collectors can act only within express authority conferred thereby, the scope of such laws cannot be extended by implication or forced construction, and language, if dubious, is not resolved against the taxpayer.	Can the scope of tax laws be extended by implication or forced construction?	045253.docx	LEGAL/ASE-00135099 LEGAL/ASE-00135100	Condensed, SA	0.59	0	1	0	1	
1800										0	1	0	1	

Accepted for publication 12 November 2007

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Original Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences	
1810	Serrano v. Ryan's Crossing Apartments, 241 S.W.3d 560	307A+723.1	A motion for continuance must be in writing, state the specific facts supporting the motion, and be verified or supported by an affidavit. See Tex.R. Civ.P. 251; Blake v. Lewis, 886 S.W.2d 404, 409 (Tex.App.-Houston [1st Dist.] 1994, no writ); Higginbotham v. Collateral Protection, Inc., 859 S.W.2d 487, 490 (Tex.App.-Houston 1st Dist. 1993, writ denied). If the motion is not verified or supported by affidavit, we presume the trial court did not abuse its discretion. Southwest Country Enterprises, Inc. v. Lucky Lady Oil Company, 991 S.W.2d 489, 493 (Tex.App.-Fort Worth 1999, pet. denied); Waste Water, Inc. v. Alpha Finishing & Developing Corp., 874 S.W.2d 540, 542 (Tex.App.-Houston [14th Dist.] 1994, no writ). We construe Serrano's argument as stating that her motion was verified because she appears pro se and has personal knowledge of the facts at issue. Verification is "[a] formal declaration made in the presence of an authorized officer, such as a notary public, by which one swears to the truth of the statements in the document." Andrews v. Stanton, 198 S.W.3d 44, 8 (Tex.App.-El Paso 2006, no pet. h.), citing Black's Law Dictionary 1556 (7th Ed. 1999). Serrano's motion was not verified because it was unwritten.	For purposes of rule requiring verification of a motion for a continuance, affidavits for declarations made in the presence of an authorized officer are not required. The truth of the statements in the document. Vernon's Ann. Texas Rules Civ.Proc., Rule 251.	"For purposes of rule requiring verification of a motion for a continuance, affidavits for declarations made in the presence of an authorized officer are not required. The truth of the statements in the document?"	030587.docx	LEGALASE-00137325-LEGALASE-00137326	Order, SA, Sub	0.75	1	0	15,344	14,873	21,876	9,029
														1	
1811	Body, Vickers & Daniels v. Custom Mach., 77 Ohio App. 3d 587	307A+720	Similarly, continuances, like amendments, are a matter of judicial discretion, and it is well settled that the granting or denial of them is committed to the sound discretion of the trial judge. Kidd v. Transit Co. (1970), 24 Ohio App.2d 101, 102, 53 O.O.2d 265, 286, 265 N.E.2d 297, 298-299. Further, where a party objects to amended or supplemental pleadings is not prepared to proceed under the new pleadings, the court may still allow an amendment under Civ.R. 15 and grant a continuance to enable the opposing party to meet the new evidence. See Hall v. Burn, supra, 11 Ohio St.3d at 118, 11 OBR at 417, 464 N.E.2d at 517.	Where party objecting to augmented or supplemental pleadings is not prepared to proceed under new pleadings, court may still allow amendment and grant continuance to enable opposing party to meet new evidence. Rules Civ.Proc., Rule 15.	"Where a party objecting to augmented or supplemental pleadings is not prepared to proceed under new pleadings, may a court still allow amendment and grant continuance?"	Preltrial Procedure - Memo # 4578 - C- No.docx	R055-00304219-R055-00304220	SA, Sub	0.63	0	0	1	1	1	
														1	
1812	Eagle River Mobile Home Park, Ltd. v. Dist. Court In & For Sagie City, 64772d 660	302+239(2)	The defendant in this case did assert that they would be prejudiced by Eagle River's attempt to assert supplemental damages because of a lack of adequate time to prepare their defense to these claims. However, even where the party attempting to amend its pleadings is guilty of delay in doing so, the court is not required to grant a continuance. The court is not required to grant a continuance to any conditions necessary to avoid prejudice to the opposing parties. See 6 C. Wright & A. Miller, Federal Practice and Procedure, § 1488 at 440-44 (1971). Where the prejudice suffered by the opposing party is lack of adequate time to prepare his case, this hardship may be avoided by granting a continuance of the trial date. Id.; see also, H.W. Huston Construction Co. v. District Court, supra. In contrast, where prejudice to a party resulting from amendment of the pleadings cannot be avoided by granting a continuance of the trial date, the court should grant a continuance. See 6 C. Wright & A. Miller, Federal Practice and Procedure, § 1488 at 440-44 (1971); see also Spiker v. Hoogboom, supra.	Where prejudice which would be suffered by opposing party from amending of other party's pleadings is lack of adequate time to prepare his case, this hardship may be avoided by granting a continuance of the trial date.	"Where prejudice which would be suffered by an opposing party from amending of other party's pleadings is lack of adequate time to prepare his case, may this hardship be avoided by granting a continuance?"	031222.docx	LEGALASE-00137331-LEGALASE-00137332	Condensed, SA, Sub	0.81	0	1	1	1	1	
														1	
1813	Lloyd F. Ullman, P.C. v. Bell Ati-Washington, D.C. Inc., 652 A.2d 1209	307A+726	We find no abuse of discretion in the trial court's decision to dismiss appellants' claim without prejudice. "A trial court may, in its discretion, dismiss a claim which has not been prosecuted with reasonable diligence." Beckwith v. Beckwith, 379 A.2d 955, 958 (D.C. 1977) (citing Link v. Wabash Railroad Co., 370 U.S. 626, 82 S.Ct. 1386, 8 L.Ed.2d 734 (1962)), cert. denied, 436 U.S. 907, 98 S.Ct. 2239, 56 L.Ed.2d 405 (1978). The dismissal of appellants' counterclaim was based on appellants' failure to appear at the scheduling conference on October 22, 1993, and on his failure to oppose appellee's earlier motions to strike and dismiss the counterclaim. Appellant claimed that he had failed to appear at the conference because he had never received notice. The trial court found, however, that appellant had previously claimed relief from judgment on the ground of lack of service, and that appellant's failure to appear at the scheduling conference was only the most recent instance of appellant's disregard for Superior Court procedures. See Order, February 25, 1994 ("Plaintiff has now shown a pattern of Defendant's [counterclaimant's] dilatory conduct." Dismissal of counterclaim without prejudice was justified by counterclaimant's failure to appear at scheduling conference on October 22, 1993, and on this failure to oppose appellee's earlier motions to strike and dismiss counterclaim, despite counterclaimant's allegations that he never received notice; record reflected both that notice was sent to counterclaimant and that he had a history of claiming lack of notice.	Dismissal of counterclaim without prejudice was justified by counterclaimant's failure to appear at scheduling conference and failure to oppose earlier motions to strike and dismiss counterclaim, despite counterclaimant's allegations that he never received notice; record reflected both that notice was sent to counterclaimant and that he had a history of claiming lack of notice.	Would the dismissal of counterclaim without prejudice be justified by counterclaimant's failure to appear at scheduling conference?	031433.docx	LEGALASE-00137485-LEGALASE-00137486	Condensed, SA, Sub	0.75	0	1	1	1	1	
														1	
1814	BiMagic v. Dutch Bros. Enterprises, 729 F. Supp. 2d 1140	257+151	Moreover, as a practical matter, inclusion of a generic choice of law clause in a contract does not reflect intent to be bound by specific state procedural rules on arbitration that differ from the FAA. See Supreme Court decision in <i>Shearman & Sterling v. Attorney General of the State of New York</i> , 529 U.S. 64, 120 S.Ct. 2209 (2000) ("Attorneys' drafting choice of law clauses typically consider the chosen state's substantive law, not its arbitration procedure," which often differ from those of the [FAA]). Most obviously recognized this by saying, "[b]y a practical matter, it seems unlikely that petitioners were actually aware of New York's bifurcated approach to punitive damages, or that they had any idea that by signing a standard form agreement to arbitrate disputes they might be giving up an important substantive right in the case of such a loss. We are unwilling to impute this intent to petitioners."	Inclusion of a generic choice of law clause in a contract does not reflect intent to be bound by specific state procedural rules on arbitration that differ from the Federal Arbitration Act (FAA). 9 U.S.C.A. § 1 et seq.	Does an inclusion of a generic choice of law clause in a contract reflect the intent of the parties to be bound by specific state procedural rules which differ from Federal Arbitration Act (FAA)?	007595.docx	LEGALASE-00138993-LEGALASE-00138994	Condensed, SA, Sub	0.76	0	1	1	1	1	
														1	

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ROW	Judicial Opinion	WIKNS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
1819	Blaylock v. Gen. Motors Corp., 881 S.W.2d 422	307A-36.1	The appellants, however, wanted to delve into the negotiations process. Discovery of settlement negotiations in ongoing litigation is unusual because it would reveal information about an opponent's strategy, information that can later be wielded against the opponent and the opponent's attorney. See, e.g., <i>Merz Steel Corp.</i> , 834 F.2d at 1684; see also <i>Manual for Complex Litigation (Second)</i> ¶ 30.4.2 (1985) (cautioning against pressing counsel for detailed explanations of their settlement calculus because it could disclose matters which may be damaging if the settlement is disapproved). Such discovery is proper only where the party seeking it lays a foundation by adducing from other sources evidence indicating that the settlement may be the result of collusion or of other improper motives. See, e.g., <i>White v. Baker & Ferrell</i> , 1992 WL 322,541, 1992 S.W.2d 330, 342n (Mo. Min. 1993); <i>Domestic Air</i> , 144 F.R.D. at 424; <i>Bowling v. Pfister, Inc.</i> , 143 F.R.D. 141, 346 (S.D. Ohio 1992). The appellants produced no independent evidence suggesting that the settlement was anything other than the result of arm's-length negotiations. The trial court did not abuse its discretion in refusing to keep the record open for thirty days so that the officers could conduct further discovery.	Discovery of settlement negotiations and settlement calculus in class action is proper only when objectors seeking discovery lay foundation by adducing from other source evidence indicating that settlement may be result of collusion.	Is the discovery of settlement negotiations and settlement calculus in class action proper only when objectors seeking discovery lay foundation by adducing from other source evidence indicating that settlement may be result of collusion?	031905.docx	LEGALSE-00139279- LEGALSE-00139280	Condensed, SA, Sub	0.82	839	15,344	34,873	21,876	9,029
										0	1	1	1	1
1820	Mendez Camilo v. United States, 642 F.3d 1040	3A-712	As this court has noted before, "When a military officer is involuntarily separated from active duty, or mandatorily retired, for twice failing to be selected for promotion, [h]e may apply for relief, pursuant to 10 U.S.C. 1552(b), to the appropriate correction board." <i>Roth v. United States</i> , 378 F.3d 137, 1381 (Fed.Cir.2004). A correction board is made up of civilians, not military officers, and its purpose is to correct errors in the military record, "when the Secretary considers it necessary to correct an error or remove an injustice." 10 U.S.C. "1552(b)(1).	When a military officer is involuntarily separated from active duty, or mandatorily retired, for twice failing to be selected for promotion, she may apply for relief for the appropriate correction board. 10 U.S.C.A. 5 1552(b).	"Can a person apply for relief when a military officer is involuntarily separated from active duty, or mandatorily retired, for twice failing to be selected for promotion?"	008413.docx	LEGALSE-00139644- LEGALSE-00139645	Condensed, SA	0.61	0	1	0	1	
										0	1	0	1	
1821	United States v. Knead-Chuney, 556 F.3d 923	372-102.410	Use the <i>quid pro quo</i> requirement for Hobbs Act extortion under color of official right charges, the <i>quid pro quo</i> necessary for a bribery honest services fraud conviction need not be explicit, and the district court need not use the words "quid pro quo" when it instructs the jury so long as the essential idea of give-and-take is conveyed. <i>Id.</i> 5 U.S.C.A. 5 134(b).	<i>Quid pro quo</i> necessary for a bribery honest services fraud conviction need not be explicit, and the district court need not use the words "quid pro quo" when it instructs the jury so long as the essential idea of give-and-take is conveyed. <i>Id.</i> 5 U.S.C.A. 5 134(b).	Does the <i>quid pro quo</i> necessary for a bribery honest services fraud conviction need to be explicit?	012055.docx	LEGALSE-00140672- LEGALSE-00140673	Condensed, SA	0.81	0	1	0	1	
										0	1	0	1	
1822	Bedford v. White, 106 Colo. 439	296-2	"A pension is not a matter of contract, and is not founded upon legal liability. No man has a legal vested right to a pension; it is a mere gratuity, and is subject to the power of Congress to alter, amend, suspend, repeal, or otherwise dispose of it, at its pleasure, at any time, change the amount thereof or revoke or destroy it altogether." 48 C.J. 786, * 2.	"A pension" is not a matter of contract and is not founded on legal liability, and no legal vested right thereto exists, but instead "pension" is a mere gratuity, and is subject to the power of Congress to alter, amend, suspend, repeal, or otherwise dispose of it, at its pleasure, at any time, change the amount thereof or revoke or destroy it altogether. 48 C.J. 786, * 2.	Should pensions be subject to such limitations as may be imposed?	022780.docx	LEGALSE-00140536- LEGALSE-00140537	SA, Sub	0.55	0	0	1	1	
										0	0	1	1	
1823	Travers v. Jennings, 39 S.C. 410	307A-74	The text of the third section of the Act of 1883 (18 S.C. 479, 379) is as follows: "The officer taking it shall be delivered to, with his own hand, into the court for which it is taken, or it shall be by such officer sealed up, and directed to and forwarded to such court, either by mail or express, and "remain under his seal" until opened in court, etc. Held, that a deposition transmitted to the court by mail in a sealed envelope is not admissible in evidence unless the notary by some act, such as the use of sealing wax or express, and remain under his seal until opened in court. [Italics ours.]" This act, but not upon the court record, was required by the statute. See <i>Stoddard v. Hill</i> , (S. C.) 17 S. E. Rep. 138. In the case first cited this language occurs: "The act of 1883 (18 S.C. 379) confers special privileges upon certain prescribed conditions; and, according to the well settled rule, a party cannot avail himself of such privileges without complying with the conditions prescribed by the statute. The statute, therefore, in this respect, has the United States supreme court expressed itself, as will be seen in <i>Beil v. Morrison</i> , 1 Pet. 355; <i>Shutte v. Thompson</i> , 15 Wall. 161.	1851, at large, p. 373, S. 3, Act 1883, relating to depositions on oaths, and the officer taking it until he delivers it, with his own hand, into the court for which it is taken, or it shall be by such officer sealed up, and directed to and forwarded to such court, either by mail or express, and "remain under his seal" until opened in court, etc. Held, that a deposition transmitted to the court by mail in a sealed envelope is not admissible in evidence unless the notary by some act, such as the use of sealing wax or express, and remain under his seal until opened in court. [Italics ours.]" This act, but not upon the court record, was required by the statute. See the evidence that the package sent to the court is his work.	"Shall every deposition so taken be retained by the officer taking it until he delivers it, with his own hand, into the court?"	032976.docx	LEGALSE-00140522- LEGALSE-00140523	Condensed, SA, Sub	0.44	0	1	1	1	1

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	Borrego v. United States, 577 F.Supp. 408	41+8	Plaintiffs claim that adoption of the "bull rule" exceeded the authority granted to the Secretary of Agriculture by Congress regarding regulation of the National Forests. 16 U.S.C. § 551 grants to the Secretary of Agriculture power to make and promulgate rules and regulations concerning such regulations as he may deem proper. 16 U.S.C.A. § 551(a), 580. The Secretary of Agriculture is regulating grazing on the National Forests... Is authorized, upon such terms and conditions as he may deem proper, to issue permits for the grazing of livestock for periods not exceeding ten years and renewals thereof....(emphasis added). The "bull rule" at issue here, included as a condition within grazing permits, clearly concerns the "occupancy and use" of National Forest land. "Broad term" language does not require the court's decision to restrict its application to issue permits under such regulations as he may make and upon such terms and conditions as he may deem proper." Sabon v. Butz, 515 F.2d 1061, 1066 (10th Cir.1975); see also, United States v. Hymms, 463 F.2d 615 (10th Cir.1972). Authority therefore exists in the Secretary of Agriculture to impose the "bull rule" as a condition for plaintiffs' use of the National forest.	Under statute granting Secretary of Agriculture power to make and promulgate rules and regulations concerning "occupancy and use" of national forests, Secretary has broad authority to issue use permits under such regulations as he may make and upon such terms and conditions as he may deem proper. 16 U.S.C.A. § 551(a), 580.	Which statute empowers the Secretary of Agriculture to make rules regarding occupancy and use of national forests?	Woods and forest - Memo 72 - ANN.docx	R055-003304627-R055-003330628	Condensed SA, Sub 0.73	0	839	15,344	14,873	21,076	1	9,029
1824	Jaggie v. Northstar Tubular Corp., 195 AD.2d 336	(B3+6)1]	In this case, while the complaint alleges that Coopers & Lybrand was actually involved in offering a bribe, it does not allege that the bribe was offered without knowledge of the proposed recipient's principal or that this corporation, or that plaintiff was actually harmed, and therefore fails to allege commercial bribery in the first degree under New York Penal Law § 160.50(1)(c). Plaintiff alleged that Coopers & Lybrand wrote a letter falsely informing plaintiff that its audit report would be ready shortly. As to this allegation, there is no additional allegation of scienter nor are there facts alleged from which the court could infer the requisite fraudulent intent. Under those circumstances, a claim for mail fraud was not made out. United States ex. Relator v. Hodder, 28 Cr. 786 F.2d 77, 80, cert. denied 479 U.S. 826, 107 S.Ct. 105, 63 L.Ed.2d 100 (1992); see also, United States ex. Relator v. Kohn et al., No. 03-CV-00015-LSP-JCL Document 1-1 Filed 06/14/03 Page 14 of 19. Defendant knew or should have known of certain false and overlooked them in preparing its audits are similarly insufficient to allege a predicate act.	While complainant alleged that accounting firm was actually involved in offering bribes, it did not allege that bribe was offered without knowledge of proposed recipient's principal or that plaintiff was harmed, as required to allege commercial bribery in first degree under New York Penal law as predicate act for racketeering influenced and Corrupt Organizations Act (RICO) claim. Judiciary's Penal law § 160.50(1)(c), 16 U.S.C.A. § 580(1).	To state a commercial bribery claim, is it required to allege that the bribe was offered without the knowledge of the proposed recipient's principal?"	LEGALCASE-00140742- LEGALCASE-00140743	01,2051.docx	Condensed SA, Sub 0.61	0	1	1		1	1	
	United States v. Jefferson, 502 F.Supp.2d 687	(B3+6)1]	The Second Circuit rejected Baggett's argument, concluding that "201 is sufficient if it follows that an indictment under '201 is sufficient if the acts alleged to have been undertaken in return for the bribe are among the defendant's official duties or among the settled customary practices of his office."	An indictment under the bribery statute is sufficient if the acts alleged to constitute the offense are among the defendant's official duties or practices of his office. 18 U.S.C.A. § 201.	Under the bribery statute is an indictment sufficient if the acts alleged to constitute the offense are among the defendant's official duties or among the settled customary duties or practices of his office?	Bribery - Memo #74 - C R055-003303741 ALDOX		Condensed, Order, SA	0.45	1	0	1		1	1
1826	Koshygry v. Sch. Dist. No. 489 of City of N., 63 Neb. 333	307A+483	In that connection, the applicable law here is that where a party properly pleads a fact material to her defense, she must establish that other than mere genuineness of relevant documents, and all objections thereto are heard and appropriately denied by the court, and the other party has been ordered to respond thereto, his failure to do so within the time allotted constitutes an admission of the facts sought to be elicited. In such situation a motion for summary judgment is appropriate and may be granted. Federal Practice Procedure ch. 9, Fed.Rules Civ.Procedure p. 534, and 4 Moore's Federal Practices (2d ed.), ch. 36, p. 2701, in both of which texts numerous supporting cases are cited See, also, Mecham v. Colby, 158 Neb. 386, 56 N.W.2d 295, Section 25-1332, R.S.Mupp.1951..	When a party properly pleads requests for admissions of pleadings material to her defense, she must establish that other than mere genuineness of relevant documents, and all objections sought to be elicited, B.S.Supp.1955, § 25-1332, 1267.41.	"Where a party properly pleads requests for admissions of pleadings material to her defense, she must establish that other than mere genuineness of relevant documents, and all objections sought to be elicited, B.S.Supp.1955, § 25-1332, 1267.41."	LEGALCASE-00141344- LEGALCASE-00141345		Condensed SA, Sub 0.78	0	1	1		1	1	1
1827	Brooks v. Am. Broad. Co., 179 Cal. App. 3d 500	307A+474	The determination of whether there were no good reasons for the denial of a request for discovery is a matter for the trial court's discretion. If the trial court exercises its discretion and determines that the interests of justice outweigh the burden of compliance with the request for discovery, the trial court's decision will not be reversed unless the appellant demonstrates that the lower court abused its discretion.	Determination of whether there was no good reason for denial, whether requested admission was of substantial importance, and amount of expenses awarded for establishing fact denied, if any, are within sound discretion of trial court. West's Ann.Cal.C.C.P. § 203(Hc).	"% determination of whether there was no good reason for denial, and amount of expenses awarded for establishing fact denied, within the sound discretion of trial court?"	LEGALCASE-00144472- LEGALCASE-00144472		SA, Sub	0.57	0	0		1		
1828	Williams v. Gould, 232 Neb. 862	307A+36.1	Therefore, any party to action in which a special appearance has been filed is entitled to discovery authorized by the Nebraska Discovery Rules to ascertain facts relevant to count 2 jurisdiction over person of defendant.	Any party to action in which special appearance has been filled is entitled to discovery authorized by Nebraska Discovery Rule to ascertain facts relevant to court's jurisdiction over person of defendant.	Is any party to an action in which a special appearance has been filed entitled to discovery authorized by rules to ascertain facts relevant to court's jurisdiction over a person of defendant?	032151.docx		Condensed SA	0.79	0	1	0		1	
1829															

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1880	Matter of Hefel Broad. Holdout, 571 Haw. 175	371-2005	The basic test of State Jurisdiction to tax is whether the tax bears some relationship to the tax base. The tax base is the property, opportunities and benefits which the State taxes. The tax base is the property, opportunities and benefits which in fairness it can ask such a return. U.S.C.A. Const. art. I, § 5, cl. 3; Amend. 14.	Basic test of state jurisdiction to tax is whether the tax bears some relationship to the tax base. The tax base is the property, opportunities and benefits which the State taxes. The tax base is the property, opportunities and benefits which in fairness it can ask such a return. U.S.C.A. Const. art. I, § 5, cl. 3; Amend. 14.	% whether the tax bears some reasonable fiscal relation to the protection opportunities and benefits given by the state, the basic test of the state jurisdiction to tax?	045486.docx	LEGAL/SE-00141756- LEGAL/SE-00141757	SA, Sub	0.62	0	15,344	14,873	21,876	9,079
1881	Greenlee v. Dukes Plastering Serv., 75 S.W.3d 273	413-446	Workers' compensation law is entirely a creature of statute, and when interpreting the law the court must ascertain the intent of the legislature by considering the plain and ordinary meaning of the terms and give effect to that intent if possible.	Workers' compensation law is entirely a creature of statute, and when interpreting the law the court must ascertain the intent of the legislature by considering the plain and ordinary meaning of the terms and give effect to that intent if possible.	"When interpreting a statute, like workers compensation law, must a court ascertain the intent of the legislature and give effect to that intent if possible?"	048166.docx	LEGAL/SE-00142063- LEGAL/SE-00142064	Condensed, SA	0.65	0	1	0	1	
1882	People v. Adams, 19 Cal. App. 4th 912	63-111	The gist of the crime of bribery is the wrong done to the people of the state by the public servant who, for his own private gain, does manipulate events, not to benefit himself or a third party, but for the personal satisfaction of commanding obedience, is said to receive no bribe. Penal Law § 200.10.	The gist of the crime of bribery is the wrong done to the people of the state by the public servant who, for his own private gain, does manipulate events, not to benefit himself or a third party, but for the personal satisfaction of commanding obedience, is said to receive no bribe. Penal Law § 200.10.	Is the gist of the crime of bribery the wrong done to the people of the state by the public servant?	Bribery - Memo #835 - CS.docx	DOCS-00301601-4055- 00301601	SA, Sub	0.58	0	0	1	1	
1883	Gerrity Oil & Gas Corp. v. Magness, 946 P.2d 913	260-5111	In the absence of statutes, regulations, or lease provisions to the contrary, unless the conduct of an operator in accessing, exploring, drilling, and using the surface is reasonable and necessary to the development of the mineral interest, the conduct is a trespass. See <i>Traktion Oil Co. v. Adams</i> , 359 Colo. 355, 453 P.2d 150, 154 (1969). In the absence of statutes, regulations, or lease provisions to the contrary, an implied easement, since it entitles the holder to a limited right to use the land in order to reach and extract the minerals. See <i>Restatement of Property</i> 450 [944] (defining easement); <i>Howard R. Williams & Charles J. Meyers, Oil and Gas Law</i> 218 (1996) (In the absence of relevant lease provisions, "It has been held that such surface easements are implied as will permit the lessee or mineral owner to enjoy the interest conveyed."). At the owner of property subject to the easement, the surface owner has the burden of the easement. "Bilou Irrigation Dist. v. Empire Club, 804 P.2d 175, 183 (Colo.1991) (quoting <i>Barnard v. Guerner</i> , 146 Colo. 409, 412, 361 P.2d 778, 780 (1961)). The surface owner thus continues to enjoy the right to use the entire surface of the land as long as such use does not preclude exercise of the lessee's privilege.	In the absence of statutes, regulations, or lease provisions to the contrary, unless the conduct of an operator in accessing, exploring, drilling, and using the surface is reasonable and necessary to the development of the mineral interest, the conduct is a trespass. See <i>Traktion Oil Co. v. Adams</i> , 359 Colo. 355, 453 P.2d 150, 154 (1969). In the absence of statutes, regulations, or lease provisions to the contrary, an implied easement, since it entitles the holder to a limited right to use the land in order to reach and extract the minerals. See <i>Restatement of Property</i> 450 [944] (defining easement); <i>Howard R. Williams & Charles J. Meyers, Oil and Gas Law</i> 218 (1996) (In the absence of relevant lease provisions, "It has been held that such surface easements are implied as will permit the lessee or mineral owner to enjoy the interest conveyed."). At the owner of property subject to the easement, the surface owner has the burden of the easement. "Bilou Irrigation Dist. v. Empire Club, 804 P.2d 175, 183 (Colo.1991) (quoting <i>Barnard v. Guerner</i> , 146 Colo. 409, 412, 361 P.2d 778, 780 (1961)). The surface owner thus continues to enjoy the right to use the entire surface of the land as long as such use does not preclude exercise of the lessee's privilege.	% the conduct of an operator in accessing, exploring, drilling, and using the surface is reasonable and necessary to the development of the mineral interest?"	021410.docx	LEGAL/SE-00143540- LEGAL/SE-00143541	SA, Sub	0.81	0	0	1	1	
1884	King v. Mayor & Council of Rockville, 249 Md. 243	307A-217.1	We find no error and no prejudice in requiring Mrs. King to go to trial. Under Maryland Rule 527 and the decisions of this Court the granting or refusing of a continuance is in the sound discretion of the trial court and an important factor in the exercise of that discretion is whether the witness who is unavailable will be able to be present within a reasonable time. <i>Thornas v. Mitchell</i> , 220 Md. 389, 392-393, 152 A.2d 833. Passing the fact that Mrs. King did not present the affidavits in support of her motion for a continuance to the jury for its determination that Mrs. King might never be able to appear in court or, at least, in may be inferred, might never choose to appear was fully justified by consideration of the history of the case set out above. If there were error in compelling trial, there was no prejudice since Mrs. King's expert witnesses based their testimony on all the facts and data that Mrs. King had given them as to rents, expenses, and vacancies, and were permitted to give estimates of value reflecting her theories that they might not have been permitted to give had she been present.	Important factor in exercise of court's discretion to grant continuance is whether witness who is unavailable will be able to be present within reasonable time. Maryland Rules, Rule 527.	"While granting or refusing of a continuance, is it an important factor in the exercise of a court's discretion that whether the witness who is unavailable will be able to be present within a reasonable time?"	033018.docx	LEGAL/SE-00143536- LEGAL/SE-00143537	Order, SA, Sub	0.83	1	0	1	1	1

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1835	Main Rehab. & Diagnostic Cr. v. Liberty Mut. Ins. Co., 376 S.W.3d 825	307A-554	When the Legislature grants an administrative agency the sole authority to make an initial determination in a dispute, the agency has exclusive jurisdiction over the dispute. <i>Thomas v. Long</i> , 207 S.W.3d 340, 340 (Tex.2006); <i>HealthSouth Med. Ctr. v. Employers Ins. Co. of Wausau</i> , 232 S.W.3d 828, 830-31 (Tex.App.-Dallas 2007, pet. denied). Whether the Legislature has vested exclusive jurisdiction in an agency is determined by examination and construction of the relevant statutory scheme. <i>Thomas</i> , 207 S.W.3d at 340 (citing <i>Subaru of Am., Inc. v. David McDavid Nissan, Inc.</i> , 84 S.W.3d 222, 221 (Tex.2002)). An agency has exclusive jurisdiction when the Legislature expressly grants the agency exclusive jurisdiction or when the Legislature grants the agency the sole power to make an administrative determination in a dispute. <i>Duenes v. HealthSouth Med. Ctr.</i> , 232 S.W.3d at 908-09; <i>Thomas</i> , 207 S.W.3d at 340. If an administrative body has exclusive jurisdiction, a party must exhaust all administrative remedies before seeking judicial review. <i>Duenes</i> , 288 S.W.3d at 908; <i>HealthSouth Med. Ctr.</i> , 232 S.W.3d at 831. Until the party has satisfied this exhaustion requirement, the trial court lacks subject matter jurisdiction and must dismiss those claims without prejudice to refile. <i>Thomas</i> , 207 S.W.3d at 340; <i>HealthSouth Med. Ctr.</i> , 232 S.W.3d at 831.	Until a party has satisfied the requirement to exhaust administrative remedies, the trial court lacks subject-matter jurisdiction and must dismiss those claims without prejudice to refile.	"Does the trial court lack subject-matter jurisdiction until a party has satisfied the requirement to exhaust all administrative remedies, and must dismiss those claims without prejudice to re-filing?"	Perital Procedure - Memo #5760 - C - V.docx	ROSS-00304815-K055-003304816	Condensed, SA	0.86	839	1	14,873	21,876	9,029
			To be relieved of the default in appearing at the conference, the plaintiff was required to show both a reasonable excuse for the default and the existence of a potentially meritorious cause of action. <i>McKinney's C.R.P. 5015(a)(1)</i> .	"To be relieved of a default in appearing at a compliance conference in a personal injury action, is a plaintiff required to show both a reasonable excuse for the default and the existence of a potentially meritorious cause of action?"	033067.docx	LEGALCASE-00142447-LEGALCASE-00142448	SA, Sub	0.39	0	0	1	1	1	
1837	<i>Adelson v. Hananel</i> , 510 F.3d 43	170B-2081	Applying the prima facie standard, Adelson bears the burden of establishing that the district court has personal jurisdiction over Hananel. We "must accept the plaintiff's properly documented evidentiary proffers as true for the purpose of determining the adequacy of the prima facie jurisdictional showing." <i>Foster Miller</i> , 46 F.3d at 145. In fact, we accept those facts as true. Respective of whether the defendant disputes them in opposing the plaintiff's jurisdictional claim, the light most congenial to the plaintiff's jurisdictional claim must govern. <i>Maas, Sch. of Law at Andover, Inc. v. Am. Bar Ass'n</i> , 142 F.3d 26, 34 (1st Cir.1998). Those facts put forward by the defendant become part of the mix only to the extent that they are uncontradicted. <i>Id.</i> at 34.	Court of Appeals must accept the plaintiff's properly documented evidentiary proffers as true for the purpose of determining the adequacy of the prima facie jurisdictional showing, irrespective of whether the defendant disputes them, and in so doing, Court of Appeals must construe them in the light most congenial to the plaintiff's jurisdictional claim; those facts put forward by the defendant become part of the mix only to the extent that they are uncontradicted.	Should the court construe the plaintiff's evidentiary proffers in the light most congenial to the plaintiff's jurisdictional claim?	033080.docx	LEGALCASE-00142518-LEGALCASE-00142519	Condensed, SA, Sub	0.37	0	1	1	1	1
1838	<i>Shaw v. Tripp</i> , Life Ins. Co., 495 S.W.2d 495	307A-726	Appellant also complains of the failure of the trial court to grant him a second continuance prior to its ruling on the motion for summary judgment. We believe, after a careful review of the record, that the appellant had ample time prior to summary judgment within which to contradict movant's assertions, and that the trial court did not abuse its discretion in failing to grant appellant a further postponement. Furthermore, appellant did not move for a new trial on the ground of the failure to grant a second continuance. Even in a summary judgment case, on a trial to the court, a motion for new trial is necessary to preserve such an error. Trial court did not abuse its discretion in failing to grant plaintiff a second continuance prior to ruling on summary judgment motion brought by adverse party.	Trial court did not abuse its discretion in failing to grant plaintiff's second continuance prior to ruling on summary judgment motion brought by adverse party.	Will the court abuse its discretion in failing to grant plaintiff a second continuance prior to ruling on summary judgment motion brought by adverse party?	033094.docx	LEGALCASE-00142583-LEGALCASE-00142584	Condensed, SA, Sub	0.8	0	1	1	1	1
			Examining these same provisions in <i>Fogg v. Macaluso</i> , 892 P.2d 721, 726 (Colo.1995), we held that whether a public entity qualifies for immunity under the emergency vehicle exception is a question of subject matter jurisdiction. See also <i>Trinity Broadcasting of Denver, Inc. v. City of Westminster</i> , 848 P.2d 916, 924 (Colo.1993). As such, if raised before trial, the issue is properly addressed pursuant to a C.R.C.P. 12(b)(1) motion to dismiss, as the trial court did in this case. See <i>Fogg</i> , 892 P.2d at 726.	Is the issue properly addressed pursuant to a motion to dismiss for lack of subject matter jurisdiction if governmental immunity is raised before trial in a tort case?	Is the issue properly addressed pursuant to a motion to dismiss for lack of subject matter jurisdiction if governmental immunity is raised before trial in a tort case?	033433.docx	LEGALCASE-00142607-LEGALCASE-00142608	Condensed, SA, Sub	0.3	0	1	1	1	1
1839	<i>Consentino v. Cordova</i> , 4 P.3d 1082	307A-554	When moving for dismissal pursuant to Rule 103(b), a defendant must make a prima facie showing that the plaintiff failed to act with reasonable diligence in effectuating service after filing the complaint. <i>Emrickson</i> , 2012 IL App (1st) 111087, 17, 365 Ill. Dec. 66, 977 N.E.2d 611, 605.	When moving for dismissal for plaintiff's failure to exercise reasonable diligence in effectuating service on a defendant, defendant must make a prima facie showing that the plaintiff failed to act with reasonable diligence in effectuating service after filing the complaint. Sup. Ct. Rules, Rule 103(b).	Should a defendant make a prima facie showing that the plaintiff failed to act with reasonable diligence in effectuating service after filing the complaint?	Perital Procedure - Memo #6225 - C - V.docx	ROSS-003289613	Condensed, SA, Sub	0.06	0	1	1	1	1
1840	<i>Carman-Crothers v. Brynda</i> , 2014 IL App (1st) 130280	307A-560												

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1841	Christians v. Lincoln Auto. Co., 403 Ill. App. 3d 1038	307A-560	As noted by the trial court in this case, public policy in Illinois favors determining controversies according to the substantive rights of the parties. McCormick v. Leons, 851 Ill.App.3d 293, 295, 199 Ill.Dec. 401, 634 N.E.2d 1, 271 (1994). For this reason, courts have held that Rule 103(b) is not to be used merely to clear a crowded docket. Leons, 261 Ill.App.3d 1038. In this case, the parties have presented evidence that the controversies should ordinarily be resolved on their merits after both sides have had their day in court. A plaintiff may not complain where the dismissal resulted from his own lack of diligence in effectuating service. Sup. Ct. Rules, Rule 103(b).	Although controversies should ordinarily be resolved on their merits after both sides have had their day in court, a plaintiff may not complain where the dismissal resulted from his own lack of diligence in effectuating service. Sup Ct Rules, Rule 103(b).	"Can a plaintiff complain where the dismissal resulted from his own lack of diligence in effectuating service, although controversies should ordinarily be resolved on their merits after both sides have had their day in court?"	033751.docx	LEGALBASE-00142865- LEGALBASE-00142870	SA, Sub	0.85	839 0	15,344 0	14,473 1	21,876 1	9,029
1842	Whitaker v. Town of Southwick, 154 N.C. App. 660	413-2	The North Carolina Workers' Compensation Act is the sole remedy for an employee injured in the course of employment. The Act was created to "provide certain limited benefits to an injured employee and, simultaneously, to deprive the employee of certain rights he had at the common law. West's N.C. G.S.A. § 97-1, et seq. Brown v. Motor Inns, 47 N.C.App. 155, 118, 266 S.E.2d 848, 849, disc. review denied 301, N.C. 86, 273 S.E.2d 390 (1980).	Workers' Compensation Act was created to provide certain limited benefits to an injured employee and, simultaneously, to deprive the employee of certain rights he had at the common law. West's N.C. G.S.A. § 97-1, et seq.	Was the Workers' Compensation Act created to provide certain limited benefits to an injured employee and, simultaneously, to deprive the employee of certain rights he had at the common law?	048358.docx	LEGALBASE-00142150- LEGALBASE-00142151	SA, Sub	0.5	0	0	1	1	1
1843	Bloomgarden v. Lanza, 143 A.D.3d 850	106-35	"Although the ultimate burden of proof regarding personal jurisdiction rests with the plaintiff, to defeat a CPLR § 3111(a)(8) motion to dismiss a complaint, the plaintiff need only make a prima facie showing that the defendant is subject to the personal jurisdiction of the court" (Whitcraft v. Raymon, 123 A.D.3d 81, 812, 999 N.Y.S.2d 124, citing Weitz v. Weitz, 85 A.D.3d 1153, 926 N.Y.S.2d 905 and Cornely v. Dynamic HVAC Supply, LLC 44 A.D.3d 986, 845 N.Y.S.2d 977). Here, accepting as true the plaintiff's allegations, the court found that the defendant is subject to personal jurisdiction. The plaintiff's motion to dismiss is denied. See also Whitecraft v. Raymon, 123 A.D.3d at 812, 999 N.Y.S.2d 124). We find that the plaintiff failed to make a prima facie showing that the defendants were subject to personal jurisdiction in New York.	Although the ultimate burden of proof regarding personal jurisdiction rests with the plaintiff, to defeat a motion to dismiss a complaint, the plaintiff need only make a prima facie showing that the defendant is subject to the personal jurisdiction of the court" (Whitcraft v. Raymon, 123 A.D.3d 81, 812, 999 N.Y.S.2d 124, citing Weitz v. Weitz, 85 A.D.3d 1153, 926 N.Y.S.2d 905 and Cornely v. Dynamic HVAC Supply, LLC 44 A.D.3d 986, 845 N.Y.S.2d 977). Here, accepting as true the plaintiff's allegations, the court found that the defendant is subject to personal jurisdiction. The plaintiff's motion to dismiss is denied. See also Whitecraft v. Raymon, 123 A.D.3d at 812, 999 N.Y.S.2d 124). We find that the plaintiff failed to make a prima facie showing that the defendants were subject to personal jurisdiction in New York.	Questions whether a plaintiff only make a prima facie showing that the defendant is subject to the personal jurisdiction of the court?	Perital Procedure- Memo 51533 - C- ES.docx	LEGALBASE-00033853- LEGALBASE-00033856	SA, Sub	0.62	0	0	1	1	1
1844	First Community Bank, N.A., 489 S.W.3d 369	307A-685	When a trial court expresses an intent to rule on motion to dismiss for lack of personal jurisdiction, but is not required to support motion with affidavits or other evidentiary materials. Term 8, Civ. P. 12.02(2).	When trial court expresses an intent to rule on motion to dismiss for lack of personal jurisdiction, but is not required to support motion with affidavits or other evidentiary materials. Term 8, Civ. P. 12.02(2).	"When a trial court expresses an intent to rule on motion to dismiss for lack of personal jurisdiction, but is not required to support motion with affidavits or other evidentiary materials?"	032693.docx	LEGALBASE-00144153- LEGALBASE-00144154	SA, Sub	0.77	0	0	1	1	1
1845	State v. N. Atl. Ref. Ltd., 160 N.H. 275	307A-622	Under the prima facie standard, the inquiry is whether the plaintiff (here, the State) has proffered evidence which, if credited, is sufficient to support findings of all facts essential to personal jurisdiction." Phillips v. Prairie Eye Center, 330 F.3d 22, 261 (1st Cir. 2008); cert. denied, ___ U.S. ___, 129 S.Ct. 999, 173 L.Ed.2d 298 (2009). To make a prima facie showing, the plaintiff "ordinarily cannot rest upon the pleadings, but is obliged to adduce evidence of specific facts." Foster Miller, Inc. v. Telegraph Publ'g Co., 151 N.H. 435, 437, 859 A.2d 1146 (2004). The trial court's role, and our role in our de novo review, is "not as a factfinder, but as a data collector." That is to say, the court "... must accept the plaintiff's (properly documented) proffers as true for the purpose of determining the adequacy of the prima facie jurisdictional showing." Foster Miller, 46 F.3d at 145 (citation omitted). Additionally, the court must construe the plaintiff's evidentiary proffers "in the light most cognate to the plaintiff's position." Foster Miller, 46 F.3d at 145 (citation omitted). Facts put forward by the defendant may be considered only if they are uncontradicted by the plaintiff's submissions. Mass. School of Law at Andover v. American Bar, 142 F.3d 26, 34 (1st Cir. 1998).	The trial court's role when ruling under the prima facie standard, on a motion to dismiss for lack of personal jurisdiction, and the appellate court's role in its de novo review, is not as a factfinder, but as a data collector; thus, the court must accept the plaintiff's properly documented proffers as true for the purpose of determining the adequacy of the prima facie jurisdictional showing.	Do the courts have the role of a data collector for the purpose of determining the adequacy of the prima facie jurisdictional showing?	030339.docx	LEGALBASE-00143782- LEGALBASE-00143783	Condensed, SA	0.71	0	1	0	1	1

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1846	Munson v. Valley Energy Inv. Fund, U.S., LP, 264 O.L. App. 679	307A+480	In Oregon, where a court concludes that the parties have a valid and enforceable agreement to litigate the action in a different venue, the court may decide to dismiss the action on the basis of lack of subject matter jurisdiction. Black, 337 Or. at 264, 95 P.3d 1109. In evaluating a motion to dismiss on that ground, the trial court has authority to consider the facts alleged in the complaint along with "matters outside the pleading, including affidavits, declarations and other evidence." ORCP 21A. "Regarding [the] venue agreement and whether it is ambiguous." Black, 337 Or. at 266, 95 P.3d 1105. However, the court's determination of facts on a motion to dismiss may not include affidavits or declarations. Black, 337 Or. at 266, 95 P.3d 1105. "Id. at 265, 95 P.3d 1109; see also ORCP 21A [when evaluating jurisdictional facts on a motion to dismiss, the "court may determine the existence or nonexistence of the facts supporting such defense or may defer such determination until further discovery or until a trial on the merits"]. Thus, when considering a motion to dismiss for lack of subject matter jurisdiction, the trial court may decide disputed jurisdictional facts based on evidence submitted by the parties, but the court may not, at least in Oregon, consider affidavits or declarations in support of its claim because to do so would deprive a party of its entitlement to a trial "on disputed questions of material fact." Black, 337 Or. at 265, 95 P.3d 1109; see ORCP 47 C (laising the standard for finding genuine issues of material fact in summary judgment context); see also State v. West, 250 Or.App. 196, 204, 279 P.3d 354 (2012) ("Evidence is material if it has a reasonable probability of affecting the outcome of the proceeding." (Internal quotation marks omitted)). Black's Law Dictionary 670 (9th ed. 2009) ("a material fact is one "that is significant or essential to the issue or issues at hand").	When considering a motion to dismiss for lack of subject matter jurisdiction, the trial court may decide disputed jurisdictional facts based on evidence submitted by the parties, but the court may not, at that stage, decide disputed facts that go to the merits of the underlying claim because to do so would deprive a party of its entitlement to a trial on disputed questions of material fact. Rules Civ.Proc., Rules 21, 47.	Must a trial court make findings of the jurisdictional facts presented with a motion to dismiss on the basis of lack of jurisdiction?	03.2220.docx	LEGALBASE-00144621-LEGALBASE-00144622	SA, Sub	0.79	0	1	1	21,876	9,079	
1847	Rucker v. Taylor, 828 N.W.2d 595	307A+560	For sure, courts can always enforce the service rule on their own initiative to achieve its purpose, independent of the course of conduct of the parties. See Iowa R. Civ. P. 1.30(2)(5). Additionally, a defendant may also uphold the purpose of the service rule by moving to dismiss for untimely service. See Meier, 644 N.W.2d at 541-42. But, in both instances, good cause must be considered in deciding to dismiss a petition for untimely service, and Wilson informs us that this standard considers all the surrounding circumstances, including circumstances that would make it inequitable for a defendant to successfully move to dismiss. See 678 N.W.2d at 427-23. In Henry, it was not inequitable for the defendant to move to dismiss when his insurance representative only continued to negotiate a settlement and did nothing to make the plaintiff think service was unnecessary. See 566 N.W.2d at 151, 159-59. In Wilson, it was inequitable for the defendant to move to dismiss after allegedly agreeing to delay service. See 678 N.W.2d at 422. In the end, the results of both cases are consistent with our long-standing approach that dismissal for failing to timely accomplish service of process is appropriate when the failure results from "[i]nadvertence, neglect, misunderstanding, ignorance of the rule or its burden, or half-baked attempts at service." See id. at 421 (quoting Henry, 566 N.W.2d at 152-79, 3).	Dismissal for failing to timely accomplish service of process is appropriate when the failure results from inadvertence, neglect, misunderstanding, ignorance of the rule or its burden, or half-baked attempts at service. (I.C.A. Rule 1.30(2)(5)).	"Is dismissal for failing to timely accomplish service of process appropriate when the failure results from inadvertence, neglect, misunderstanding, ignorance of the rule or its burden, or half-baked attempts at service?"	03.3582.docx	LEGALBASE-00143741-LEGALBASE-00143742	Condensed SA, Sub	0.83	0	1	1	1	1	
1848	Fernandez v. Cohn, 54 So. 3d 1040	307A+560	As our sister court, relying on significant part on an earlier decision from this Court, has confirmed, this rule provides a trial court with three options when service has not been perfected within 120 days of the filing of the complaint. The options are: "(1) direct that service be effected within a specified time; (2) dismiss the action without prejudice; or (3) drop [the unserved] defendant as a party." Chaffin v. Jacobson, 793 So.2d 1027, 1037-104 (Fla. 2d DCA 2001). Where good cause or excusable neglect for failure to make timely service has been demonstrated, a trial court must extend the time for service, and has no discretion to do otherwise. *	Where no good cause or excusable neglect exists for failure to make timely service of process, a trial court is left to exercise its discretion as to its choice of whether to direct that service be effected within a specified time, to dismiss action without prejudice, or to drop unserved defendant as a party, except where statute of limitations has run, in which case discretion should normally be exercised in favor of extending time for service of process. West's F.S.A. RCP Rule 1.070(f).	"When no good cause or excusable neglect exists for failure to make timely service of process, is a trial court left to exercise its discretion as to its choice of whether to direct that service be effected within a specified time?"	03.3611.docx	LEGALBASE-00143850-LEGALBASE-00143851	Condensed SA, Sub	0.25	0	1	1	1	1	
1849	Christian v. Lincoln Auto. Co., 403 Ill. App. 3d 1038	307A+560	As noted by the trial court in this case, public policy in Illinois favors determining controversies according to the substantive rights of the parties. McCormack v. Leone, 265 Ill.App.3d 293, 295, 199 Ill.Dec. 401, 634 N.E.2d 1, 271 (1994). For this reason, courts have held that Rule 103(b) is not to be used merely to clear a crowded docket. Leone, 265 Ill.App.3d at 295, 199 Ill.Dec. 401, 634 N.E.2d at 3. Furthermore, although courts have held that the purpose of Rule 103(b) is to clear crowded dockets, the parties have had their day in court, a plaintiff may not complain where the dismissal resulted from his own lack of diligence in effectuating service. Kolo, 325 Ill.App.3d at 953, 259 Ill.Dec. 649, 759 N.E.2d at 1367-77. After the defendant has made a case-specific prima facie showing the plaintiff failed to exercise reasonable diligence in effectuating service after filing suit, the burden shifts to the plaintiff to offer an explanation for his actions. Kolo, 325 Ill.App.3d at 949, 259 Ill.Dec. 649, 759 N.E.2d at 1333. The plaintiff's explanation must be more than a mere statement that, rather, upon the objective test of reasonable diligence in effecting service. Canon v. Dini, 226 Ill.App.3d 482, 86, 368 Ill.Dec. 253, 589 N.E.2d 683, 686 (1992).	Although controversies should ordinarily be resolved on their merits, a trial court must craft appropriate sanctions by considering complete range of factors, including the parties' conduct and the interests of justice. Rules Civ.Proc., Rule 121(c), Standard 5.1.8, subd. 1(d).	"Although controversies should ordinarily be resolved on their merits, a trial court must craft appropriate sanctions by considering complete range of factors, including the parties' conduct and the interests of justice?"	03.3665.docx	LEGALBASE-00144151-LEGALBASE-00144152	SA, Sub	0.8	0	0	1	1		
1850	Nagy v. Dist. Court of City & County of Denver, 742 P.2d 136	307A+746	If sanctions are warranted in a case, the trial judge must craft an appropriate sanction by considering the complete range of factors, including the parties' conduct and the interests of justice. Rules Civ.Proc., Rule 121(c), Standard 5.1.8, subd. 1(d).	If sanctions are warranted for failure to file trial date certificate, trial judge must craft appropriate sanction by considering complete range of factors, including the parties' conduct and the interests of justice. Rules Civ.Proc., Rule 121(c), Standard 5.1.8, subd. 1(d).	"If sanctions are warranted for failure to file trial date certificate, should the trial judge craft appropriate sanction by considering the complete range of factors, including the parties' conduct and the interests of justice?"	Pretrial Procedure - Memo # 6609 - C - PC.docx	ROSS-000289295-ROSS-003.689296	SA, Sub	0.58	0	0	1	1		

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences	
1851	McAdams Univ. of N. Carolina at Chapel Hill, 225 N.C. App. 50	307A-552	Our Supreme Court has succinctly stated the test for mootness. Whenever, during the course of litigation, it develops that the relief sought has been granted or that the questions originally in controversy between the parties are no longer at issue, the case should be dismissed, for courts will not entertain or proceed with a cause merely to determine abstract propositions of law. In re Peoples, 296 N.C. 109, 147, 250 S.E.2d 890, 912 (1978). In North Carolina, a plaintiff's actions subsequent to the start of litigation can render the plaintiff's claims moot. For instance, in Meiser v. Town of Chapel Hill, 346 N.C. 259, 485 S.E.2d 269 (1997), a landowner brought suit against a town for a re-zoning decision that allegedly deprived the landowner of "a practical use and a reasonable value" for his land. Id. at 261, 485 S.E.2d at 270 (quotation marks and citation omitted). Because the landowner later sold the land for \$1,500,000, the Supreme Court determined the claim was moot. Id.	Whenever, during the course of litigation it develops that the relief sought has been granted or that the questions originally in controversy between the parties are no longer at issue, the case should be dismissed, for courts will not entertain or proceed with a cause merely to determine abstract propositions of law. Benveniste Parent-Teacher Association v. Nash County Board of Education, 275 N.C. 675, 170 S.E.2d 473 (1969); Crew v. Thompson, 266 N.C. 476, 146 S.E.2d 471 (1966); In re Assignment of School Children, 242 N.C. 500, 87 S.E.2d 911 (1955); Savage v. Kinston, 238 N.C. 531, 78 S.E.2d 318 (1953); 1 Strong's N.C. Index 3rd Actions 13, Appeal & Error 19 (1976).	Will courts entertain or proceed with a cause merely to determine abstract propositions of law?	034305.docx	LEGALASE-00144197- LEGALASE-00144188	Condensed, SA	0.68	839	1	15,344	14,873	21,876	9,079
	Nagy v. Dist. Court of City & Co. of Denver, 762 P.2d 136	307A-746	The guidelines for the imposition of a litigation-ending sanction such as a default judgment under a R.C.P. 37(d) were articulated by this court in In re Peoples, 296 N.C. 109, 147, 250 S.E.2d 890, 912 (1978). The court stated that a party's failure to comply with a discovery rule or order, the trial court must make a specific finding of one of three factors on the part of the disobedient party.	To impose sanction of dismissal against party for failure to comply with rule requiring filing of trial date certificate no later than 45 days before trial date, trial court must make specific finding of one of three factors on the part of disobedient party: willfulness or deliberate disobedience of rule; bad faith conduct which is flagrant disregard or dereliction of party's obligation under rule; or culpable conduct which is more than mere inadvertence or simple negligence but is gross negligence. Rules Civ.Proc., Rules 37(b)(2), 121(d), Standard 5-1-88, subd. 1(a), (d).	"To impose the sanction of a default judgment against a party for failure to comply with a discovery rule or order, should the trial court make a specific finding of one of three factors on the part of the disobedient party?"	034380.docx	LEGALASE-00144071- LEGALASE-00144072	SA, Sub	0.33	0	1	1	1		
1852	In re Peoples, 296 N.C. 109	307A-552	Whenever, during the course of litigation, it develops that the relief sought has been granted or that the questions originally in controversy between the parties are no longer at issue, the case should be dismissed, for courts will not entertain or proceed with a cause merely to determine abstract propositions of law. Benveniste Parent-Teacher Association v. Nash County Board of Education, 275 N.C. 675, 170 S.E.2d 473 (1969); Crew v. Thompson, 266 N.C. 476, 146 S.E.2d 471 (1966); In re Assignment of School Children, 242 N.C. 500, 87 S.E.2d 911 (1955); Savage v. Kinston, 238 N.C. 531, 78 S.E.2d 318 (1953); 1 Strong's N.C. Index 3rd Actions 13, Appeal & Error 19 (1976).	Whenever during course of litigation it develops that relief sought has been granted or that questions originally in controversy between parties are no longer in issue, case should be dismissed, for courts will not entertain or proceed with a cause merely to determine abstract propositions of law.	Should a case be dismissed when it develops that the questions originally in controversy between the parties are no longer at issue?	034383.docx	LEGALASE-00144456- LEGALASE-00144457	Condensed, SA	0.56	0	1	0	1		
1854	Quinn v. Wencor Food Sys., Co., 269 A.D.2d 437	307A-560	The Supreme Court improvidently exercised its discretion in denying the appellants' motion to dismiss the complaint insofar as asserted against them based upon the plaintiffs' failure to serve a complaint [see, C.R.R. 3021(b)]. In opposing the appellants' motion, the plaintiff was required to demonstrate a meritorious cause of action and a reasonable excuse for its failure to serve a complaint. Matter of New York City Employees' Union, Local 696 v. S.2A 871, 67 N.Y.2d 327, 477 A.D.2d 356, 697 N.Y.S.2d 946 (1994). Chaffarano v. Winston, 234 A.D.2d 329, 330, 651 N.Y.S.2d 868). The excuse proffered for serving the complaint 14 months after it was due, and three months after service of the motion to dismiss, was that the plaintiffs' counsel had a burglary in his office of unspecified date and "all of [his] files were thrown out and scattered around [his] office".	To withhold defendant's motion to dismiss complaint for failure to serve complaint upon demand, plaintiff must demonstrate meritorious cause of action and reasons be excuse for delay. McKinney's C.P.R. 3021(b).	"To withhold a defendant's motion to dismiss complaint for failure to serve complaint upon demand, plaintiff must demonstrate meritorious cause of action and reasonable excuse for delay?"	034421.docx	LEGALASE-00143893- LEGALASE-00143892	Condensed, SA, Sub	0.76	0	1	1	1	1	1
1855	JP Morgan Chase Bank, Nat. Ass'n v. Lillard, 36 Misc. 3d 339	307A-563	The court rejects the defendant's claim that their motion should be granted in light of the failure of the plaintiff to file a Request for Judicial Intervention upon the filing of the proof of service as required by 22 NYCRR 202.12'a (b). The rule does not require that the plaintiff file the RJI upon the filing of proof of service upon the borrower, who is likely one of several proper party defendants to be joined in the action. Additionally, there is no time requirement imposed upon the filing of proof of service effected by personal delivery [see CPLR 308(1)]. Since a plaintiff has as much as 120 days to file a motion to dismiss after the filing of the RJI, the rule does not mandate the immediate filing of the RJI. In any event, dismissal of any claim due to a default in the observance of procedural statutes is considered a drastic remedy available only upon a clear showing of willful and contemptuous conduct. [see C.R.R. 3126; Orgel v. Stewart Titles, Co., 91 A.D.3d 922, 938 N.Y.S.2d 131 (2d Dept. 2012)]; see also C.R.R. 32.16; Atterberry v. Serfin & Serfin, 85 A.D.3d 949, 925 N.Y.S.2d 860 (2d Dept. 2011); CPLR 32.16 is a "extremely forgiving" statute which does not require, but merely authorizes, the Supreme Court to dismiss a plaintiff's action based on the plaintiff's unreasonable neglect to proceed". Here, the landlords failed to demonstrate a violation of 22 NYCRR 212 "a)(b) or that any such violation warrants the dismissal of this action and/or the granting of the other relief demanded.	Dismissal of any claim due to a default in the observance of procedural statutes is considered a drastic remedy available only upon a clear showing of willful and contemptuous conduct. McKinney's C.R.R. 3126, 3216.	Is dismissal of any claim due to a default in the observance of procedural statutes considered a drastic remedy available only upon a clear showing of willful and contemptuous conduct?	Memorandum of Decision - C-18-00339372	SA, Sub	0.86	0	1	0	1	1	1	
1856	United States v. Fernandez, 772 F.3d 1	68-2	We have no hesitation in concluding that "measures to police the integrity of entities receiving federal funds fall under the scope of this power." Keen, 676 F.3d at 991, even absent evidence of an agent's authority to act specifically with respect to the covered entity's funds. "Congress does not have to act by and accept the risk of operations thwarted by local and state improbity." Sabri, 541 U.S. at 605, 124 S.Ct. 1941. To accept that there can only be harmful effects of such dishonest conduct when the actor has authority to control the expenditure of the entity's funds is to insist that the parties to such transactions are not individuals but entities. The Supreme Court's implementation of its constitutionally enumerated powers would be an unduly restrictive application of that standard. The Supreme Court has stated that to fall within the scope of the federal interest, "[i]t is certainly enough that the statutes condition the offense on a threshold amount of federal dollars defining the federal interest, such as that provided [in - 666]". Id. at 606, 124 S.Ct. 1941. We see no basis for departing from that view here.	Measures to police the integrity of entities receiving federal funds fall under the scope of Congress's power under the Necessary and Proper Clause to enact the federal bribery statute, even absent evidence of an agent's authority to act specifically with respect to the covered entity's funds. U.S.C.A. Const. Art. 1, § 8, cl. 18; 18 U.S.C.A. § 666.	Do measures to police the integrity of entities receiving federal funds fall under this scope of Congress's power to enact the federal bribery statute?	032299.docx	LEGALASE-00145573- LEGALASE-00145574	SA, Sub	0.7	0	0	1	1	1	

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ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Between Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
1869	Hick v. Moore, 902 So. 2d 181, 5.W.3d 392	302A-552	A trial court has the authority to dismiss actions based on fraud and intentional tort claims. See Young v. S&P, 502 So.2d 58, 3d DCA 1978) known as the "Young rule." The rule has been applied and sparingly exercised only upon the most blatant showing of fraud, pretense, collusion or other similar wrongdoing." <i>Id.</i> at 59.	Trial court has the authority to dismiss actions based on fraud and intentional tort claims as well as to strike pleadings, but this power should be exercised sparingly and only upon the most blatant showing of fraud, pretense, collusion, or other similar wrongdoing.	Does court have inherent authority to dismiss actions based on fraud and collusion as well as to strike pleadings?	035441.docx	LEGAL/ASE-00145256-LEGAL/ASE-00145227	SA, Sub	0.21	839	15,344	14,873	21,876	9,079
1870	Cole v. Carman, 272 S.W.3d 392	307A-552	Because the trial court has no authority to place an issue on the ballot less than six weeks before the election, a decision by this court on the merits would not have any practical effect on any existing controversy between the parties. Any such decision would be purely advisory and should be dismissed. A judge has no practical effect on an existing controversy or when an event occurs that makes a court's decision unnecessary or makes granting effectual relief by the court impossible. <i>State ex rel. Reed v. Reardon</i> , 415 W.3d 470, 473 (Mo. banc 2001); <i>Armstrong v. Elmore</i> , 9905, W.2d 62, 64 (Mo App. W.D.1999).	A case is moot and generally should be dismissed if a judgment rendered has no practical effect upon an existing controversy or when an event occurs that makes a court's decision unnecessary or makes granting effectual relief by the court impossible.	Will a case be rendered moot when an event occurs that makes a court's decision unnecessary or makes granting any relief by the court impossible?	035471.docx	LEGAL/ASE-00145871-LEGAL/ASE-00145872	Condensed, SA	0.68	0	1	0	1	
1871	Korbmeyer v. Schneider, 609 So. 2d 138	307A-563	The trial court has the inherent authority, in the exercise of its sound judicial discretion, to dismiss an action when the plaintiff has perpetrated a fraud on the court, or where a party, or the party's counsel, persistently fails or refuses to comply with court orders. Because dismissal is the most severe of all possible sanctions, it should be employed only in extreme circumstances. In some cases, where the misconduct of a party or the party's counsel has permeated the entire proceeding, dismissal of the party's claim is the only appropriate remedy. In other cases, where the misconduct pertained only to a part of the claim, dismissal of the unaffected legitimate part of the claim has been held to be too severe.	Trial court has the inherent authority, in exercise of its sound judicial discretion, to dismiss an action when plaintiff has perpetrated a fraud on the court, or where a party, or the party's counsel, persistently fails or refuses to comply with court orders.	Does the trial court have the inherent authority, within the exercise of sound judicial discretion, to dismiss an action when a plaintiff has perpetrated a fraud on the court?	Perital Procedure - Memo # 7429 - C - SK.docx	R055-00291474-R055-003291475	Condensed, SA	0.64	0	1	0	1	
1872	Kentucky Barilan Coal Co. v. Holmes, 875 S.W.2d 446	413-2	We restate that the Commonwealth's power to legislate public policy in the area of employer/employee relations derives from its police power, and the fact that there is a community interest in regulating the safety of the workplace and in requiring employers to provide for injured workers is not a sufficient basis for the Commonwealth to legislate public policy in the community. <i>Workmen's Compensation Board of Kentucky v. Abbott</i> , 212 Ky. 333, 278 S.W.3d 193(2001).	Commonwealth's power to legislate public policy in area of employer/employee relations derives from its police power, and there is a community interest in regulating safety in workplace requiring employers to provide for injured workers and their dependents so that they do not become burden on the community.	Is there a community interest in requiring employers to provide compensation for injured workers and their dependents so they do not become a burden on the community?	048263.docx	LEGAL/ASE-00145627-LEGAL/ASE-00145628	Condensed, SA	0.32	0	1	0	1	
1873	United States v. Gentile, 525 F.2d 422	63+3	The purpose behind the stipulation by the IRS of these procedures for special agents was to extend the protection of Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), to criminal tax investigations conducted in a noncustodial setting. United States v. Barker, supra, 454 F.2d at 8. A failure to give Miranda warnings, however, does not constitute a violation of the Federal Rules of Criminal Procedure for an attempt to bribe a law enforcement officer made subsequent to the arrest. <i>United States v. Perdi</i> , 256 F.Supp. 805 (S.D.N.Y. 1966); cf. <i>Vinyard v. United States</i> , 335 F.2d 176, 183-88 (8 Cir.), cert. denied, 379 U.S. 930, 85 S.Ct. 327, 13 L.Ed.2d 342 (1964). <i>United States v. Soltes</i> , 482 F.2d 105, 108 n.4 (2 Cir.), cert. denied, 414 U.S. 1027, 94 S.Ct. 405, 38 L.Ed.2d 319 (1973). We doubt also that it should prevent proof of the crime of bribery by showing the required intent through statements that would be inadmissible under the Federal Rules of Evidence. The exclusion of statements relating to the crime of bribery would seem an unnecessary extension of Miranda even in cases of custodial interrogation; the basic purpose of Miranda, to prevent abusive police interrogation of persons not aware of their right to remain silent, hardly extends to taxpayers whose quick reaction is to offer to bribe the investigating officer and are then prosecuted for doing so. It seems even more unlikely that the IRS intended its New Releases to bar a Special Agent from the use of any type of attempt to bribe him simply because he had failed to give the specified warnings.	Failure to give Miranda warnings, even in custodial setting, would not prevent prosecution for attempt to bribe law enforcement officer made subsequent to arrest.	Would failure to give Miranda warnings prevent prosecution for an attempt to bribe law enforcement officer made subsequent to arrest?	Bribery - Memo #657 - C - J.docx	R055-00285960-R055-003285961	Condensed, SA	0.9	0	1	0	1	
1874	Reyes v. Int'l Metals Supply Co., 666 S.W.2d 622	307A-483	Generally, where a party fails to answer a request for admissions within the period set by the court, the facts stated therein will be taken as true, and the court will not allow evidence to refute or controvert those facts. This rule applies to requests for admissions made by a party who has properly waived. <i>Tex. R. Civ. Pro.</i> , 169b See 2, McDonalds, Texas Civil Practice 10.09. The facts are considered to be established as a matter of law. <i>Joyner v. Albin Group</i> , 541 S.W.2d 239 (Tex.Civ.App. Houston, 134 Dist.) 1976, no writ, and it is usually unnecessary to file a formal motion asking that the request be deemed admitted.	When a party fails to answer request for admissions within period set by trial court, facts are considered to be established as a matter of law and it is usually unnecessary to file formal motion asking that request be deemed admitted. <i>Vernon Adm. Rules Civ. Pro.</i> , Rule 1.09.	When a party fails to answer request for admissions within period set by trial court, facts are considered to be established as a matter of law and it is usually unnecessary to file formal motion asking that request be deemed admitted?	10890.docx	LEGAL/ASE-00094015-LEGAL/ASE-00094016	Condensed, SA, Sub	0.55	0	1	1	1	1
1875	Feng Yan Ting v. United States, 140 U.S. 698	24+120	Chinese laborers residing in the United States are entitled, like all other aliens, to a shorter or longer time, as entitled, so long as they are permitted by the government to remain in the country, to all the safeguards of the Constitution, and to the protection of the laws in regard to their rights of person and of property, and to their civil and criminal responsibility; but, as they have taken no steps to become citizens, and are incapable of becoming such under the naturalization laws, they remain subject to the power of congress to order their expulsion or deportation whenever, in its judgment, such a measure is necessary or expedient for the public interest.	Chinese laborers residing in the United States are entitled, like all other aliens, so long as they are permitted by the government to remain in the country, to all the safeguards of the Constitution, and to the protection of the laws in regard to their rights of person and of property, and to their civil and criminal responsibility; but, as they have taken no steps to become citizens, and are incapable of becoming such under the naturalization laws, they remain subject to the power of congress to order their expulsion or deportation whenever, in its judgment, such a measure is necessary or expedient for the public interest.	Are aliens in United States entitled to the protection of its Constitution with respect to their rights of personal property?	Aliens, Immigration and J.35Vwed70UDAC x 44kgUhh3w5L8FF.doc	R055-00093900-R055-000939001	Condensed, Order, SA, Sub	0.17	1	1	1	1	1

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	Sacco v. State Ethics Comm'n., 431 Mass. 351	31:6P-4855	Therefore, in order for the commission to establish a violation of G.L. c. 268A, § 31A and (3), it there must be proof of linkage to a particular official act, not merely the fact that the official was in a position to take some undefined or generalized action, such as holding a hearing on proposed legislation that, if passed, could benefit the giver of the gratuity. "To hold otherwise would mean that any time a regulated entity interacts with a public official, the official is in a position to take an action that could benefit the giver of the gratuity, and consequently provided something of value (i.e. relevant interests, and subsequently provided something of value (i.e. relevant interests, and subsequently provided something of value (i.e. relevant interests, and subsequently provided something of value (i.e. relevant interests, and subsequently provided something of value (i.e. relevant interests, and subsequently provided something of value (i.e. relevant interests, and subsequently provided something of value (i.e. relevant interests, and subsequently provided something of value (i.e. relevant interests, and subsequently provided something of value (i.e. relevant interests, and subsequently provided something of value (i.e. relevant interests, and subsequently provided something of value (i.e. relevant interests, and subsequently provided 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ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
	<i>Rogers v. Ginn</i> , 982 So. 2d 301-3206, 1105	301+3206	"Dismissal of an action for want of prosecution is a drastic sanction. Accordingly, Alabama appellate courts scrutinize any order terminating an action for want of prosecution with care, and do not vacate it or set one aside when they find an abuse of discretion."	Dismissal of an action for want of prosecution is a drastic sanction. Accordingly, Alabama appellate courts scrutinize any order terminating an action for want of prosecution with care, and do not vacate it or set one aside when they find an abuse of discretion.	Can courts scrutinize any order terminating an action for want of prosecution and set one aside when they find an abuse of discretion?	056617.docx	LEGALCASE-00149368-LEGALCASE-00149369	Condensed, SA	0.73	839 0	15,344 0	14,873 0	21,876 1	9,079
1884														
	<i>Hilman v. Weatherly</i> , 14 So. 3d 721	307A-650	"This Court has adopted the standard promulgated by the Fifth Circuit for review of dismissals with prejudice for failure to prosecute under Rule 41(b), Am. Fed. R. Civ. P., Day v. Ino of Winton, 740 So.2d 173, 381 (Ala.1993). A trial court may dismiss an action, with prejudice, for lack of prosecution only when there is a clear record of delay or continuances conducted by the plaintiff for a serious showing of willful default. White v. Jasper City Bd of Educ., 644 So.2d 16 (Ala.Civ.App.1994); Burton v. Allen, 628 So.2d 834 (Ala.Civ.App.1993). However, the trial court discretion to grant a motion to dismiss for failure to prosecute will be accorded the same deference as a motion to dismiss for failure to prosecute will be reversed only upon a showing of abuse of discretion. Jones v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 604 So.2d 332 (Ala.1991)."	The propriety of a dismissal with prejudice is bolstered by the presence of aggravating factors, including: (1) the extent to which the plaintiff, as distinguished from his counsel, was personally responsible for the delay, (2) the degree of prejudice to the defendant, and (3) the degree to which the delay was the result of intentional conduct. Rules Civ. Proc., Rule 41(b).	"Is the propriety of a dismissal with prejudice bolstered by the extent to which the plaintiff, as distinguished from his counsel, was personally responsible for the delay?"	Pretrial Procedure - Memo #8141 - C- KJ_58457.docx	ROSS-00291921-ROSS-00291922	SA, Sub	0.63	0 0	0 0	1 1	1 1	
1885														
	<i>Plewitt v. Brown</i> , 525 S.W.3d 616	307A-622	"The purpose of a motion to dismiss for failure to state a claim upon which relief can be granted is to test the legal sufficiency of the complaint. Gore v. Dept of Correction, 132 S.W.3d 869, 373 Tenn. Ct. App. 2003. In determining whether the pleadings state a claim upon which relief can be granted, the court must accept the complaint as true, not the strength of the plaintiff's proof. Stevenson v. Davidson Hotel Co., 945 S.W.2d 714, 716 (Tenn. 1997). In considering a motion to dismiss, courts should construe the complaint liberally in favor of the plaintiff, taking all allegations of fact as true, and deny the motion unless it appears that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief. Id. (citing Cook v. Spinnaker's of Rivergate, Inc., 893 S.W.2d 934, 358 (Tenn. 1994)). On a motion to dismiss, the court is not to conduct a trial, but rather to conduct and review the trial court's legal conclusions de novo with no presumption of correctness. Tenn. R. App. P. 13(d). Stein, 945 S.W.2d at 716; Owens v. Truckstop of America, 915 S.W.2d 420, 424 (Tenn. 1996); Cook, 878 S.W.2d at 938."	The purpose of a motion to dismiss for failure to state a claim upon which relief can be granted is to test the legal sufficiency of the complaint; in determining whether the pleading states a claim upon which relief can be granted, only the legal sufficiency of the complaint is tested, not the strength of the plaintiff's proof. Tenn. R. Civ. P. 12.02(6).	"When considering a motion to dismiss for failure to state a claim upon which relief can be granted, does the court look only to the pleadings to determine whether a claim for relief has been stated?"	039710.docx	LEGALCASE-00149366-LEGALCASE-00149367	SA, Sub	0.7	0 0	0 0	1 1	1 1	
1886														
	<i>Jones v. Rochdale VIII</i> , 96 A.D.3d 1014	307A-685	"When a party moves to dismiss a complaint pursuant to CPLR 3211(a)(7), considering such a motion, "the court must accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (Sokol v. Leader, 74 A.D.3d 1180, 1180*1181, 304 N.Y.S.2d 153 [internal quotation marks omitted]; see Leon v. Martinez, 84 N.Y.2d 83, 87-88, 614 N.Y.S.2d 972, 638 N.E.2d 511). When the moving party submits evidentiary material in support of his or her motion, the court must consider the facts and circumstances of the pleading as a cause of action, not whether he or she has stated one."	When the party moving to dismiss for failure to state a cause of action asserts it is barred by other affirmative matter avoiding the legal effect of or defeating the claim, "affirmative matter" is something in the nature of a defense which negates the cause of action completely or reduces crucial material facts contained in or inferred from the complaint. S.H.A. 7951 UCS 5/26-69(g)(9).	"When the party moving to dismiss for failure to state a cause of action asserts it is barred by other affirmative matter, does the criterion then become whether the proponent of the pleading has a cause of action?"	Pretrial Procedure - Memo #80073 - C- SAG_58763.docx	ROSS-00291917-ROSS-00291917	Order, SA, Sub	0.78	1 0	0 0	1 1	1 1	1
1887														
	<i>Jones v. Marriett Int'l</i> , 2016 IL App (1st) 122731	307A-561.1	"The circuit court dismissed plaintiff's complaint pursuant to section 2-615(d)(9) of the Code, which permits the involuntary dismissal of a claim where the claim as asserted is 'barred by other affirmative matter avoiding the legal effect of or defeating the claim.' 735 ILCS 5/2-615(d)(9) (West 2010). In affirming the circuit court's dismissal of the complaint, the appellate court affirmed the nature of a defense which negates the cause of action completely or reduces crucial conclusions of law or conclusions of material fact contained in or inferred from the complaint." Illinois Graphics Co. v. Nickum, 159 Ill.2d 469, 486, 203 Ill.Dec. 463, 639 N.E.2d 1282 (1994). "Unless the affirmative matter is already apparent on the face of the complaint, the defendant must support the affirmative matter with an affidavit or with some other material that could be used to support a motion for summary judgment."	Under statute allowing involuntary dismissal of a claim where the claim asserted is barred by other affirmative matter avoiding the legal effect of or defeating the claim, "affirmative matter" is something in the nature of a defense which negates the cause of action completely or reduces crucial material facts contained in or inferred from the complaint. S.H.A. 7951 UCS 5/26-69(g)(9).	Would an affirmative matter negate the cause of action completely or reduce crucial conclusions of law or conclusions of material fact contained in or inferred from the complaint?	Pretrial Procedure - Memo #80073 - C- KJ_58967.docx	ROSS-00291917-ROSS-00291918	Condensed, SA	0.5	0 0	1 0	0 0	1 1	
1888														

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1889	Georgia Dept of Med. Assistance v. County of DeKalb, 2015 Ga. 638	307A-589	We conclude that the automatic dismissal statute is a reasonable procedural due process violation. In particular, it leaves the defendant with no opportunity to be heard, and it is applied retroactively to the plaintiff's claim. The statute also forces litigants, who have constructive knowledge of its provisions, "to forfeit their claims, to meaningful time and in a meaningful manner." "An opportunity ... at this and the statute grants a litigant five years to produce only the most minimal of activity to avoid dismissal and thereby to obtain a hearing on her claims. Moreover, in the event of dismissal, it permits the litigant to refile her claim only within six months of dismissal. The rule is not made unreasonable because it might lead to the dismissal of some cases that are not truly inactive.	Statute pursuant to which action shall automatically stand dismissed if no return order is entered within six months of the date of the hearing process; statute is unconstitutional because it leaves the plaintiff with no opportunity to be heard, and it is applied retroactively to the plaintiff's claim. The statute also forces litigants, who have constructive knowledge of its provisions, "to forfeit their claims and required only minimal activity to avoid dismissal, and gave litigants right to renew action within six months of dismissal. U.S.C.A. Const.Amend. 14, O.C.G.A. § 9-2-60.	Do the automatic dismissal statutes have the dual purpose of preventing court records from becoming cluttered by stale claims and protecting litigants from becoming dilatory counsel?	056544.docx	LEGALCASE-00150348-LEGALCASE-00150489	Condensed SA, Sub	0.37	0	1	1	21,876	9,079
1890	Barber v. Schmidt, 354 P.3d 158	307A-622	Alaska Rule of Civil Procedure 12(b)(6) provides for a motion to dismiss if the complaint "fail[s] ... to state a claim upon which relief can be granted." In order for the non-moving party to survive this motion "it is necessary to show that the complaint fails to state a claim that is legal and appropriate to some enforceable cause of action. ... The court must presume all factual allegations of the complaint to be true and [make] all reasonable inferences ... in favor of the non-moving party."	For the non-moving party to survive a motion to dismiss for failure to state a claim upon which relief can be granted, it is enough that the complaint set forth allegations of fact consistent with and appropriate to some enforceable cause of action. Rules Civ.Proc., Rule 12(b)(6).	Is it enough that the complaint set forth allegations of fact consistent with and appropriate to some enforceable cause of action?	Perital Procedure - Memo # 8367 - C- SJ_388795.docx	ROSS-00284948-ROSS-00338494	Order SA, Sub	0.43	1	0	1	1	1
1891	Peters v. Riggs, 2015 IL App (4th) 140043	307A-687	"A motion to dismiss brought pursuant to section 2-615 of the Code attacks the legal sufficiency of the complaint." In re Estate of Powell, 2014 IL 115997, 12, 382 Ill.Dec. 14, 12 N.E.3d 14. Such a motion "presents the question of whether the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, and taken as true, state a claim to relief that is legally cognizable and upon which relief may be granted." Reynolds v. Jimmy John's Enterprises, LLC, 2013 IL App (4th) 120139, 25, 370 Ill.Dec. 628, 988 N.E.2d 994. "In ruling on a section 2-615 motion, the court only consider[s] those facts apparent from the face of the pleadings, (2) matters subject to judicial notice, and (3) judicial facts that are not in dispute." In re Estate of Powell, 2014 IL 115997, 12, 382 Ill.Dec. 14, 12 N.E.3d 14. "A complaint should be dismissed under section 2-615 only if it is clearly apparent from the pleadings that no set of facts can be proven that would entitle the plaintiff to recover." Powell, 2014 IL 115997, 12, 382 Ill.Dec. 14, 12 N.E.3d 14. "The plaintiff must allege facts sufficient to bring a claim within a legally recognized cause of action." Tedrick v. Community Resource Center, Inc., 235 Ill.2d 155, 161, 336 Ill.Dec. 210, 500 N.E.2d 220, 223 (2005).	A motion to dismiss brought pursuant to statute governing motions with respect to pleadings presents the question of whether the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, and taken as true, state a claim to relief that is legally cognizable and upon which relief may be granted. S.H.A. 735 ILCS 5/2-615.	Does a motion to dismiss with respect to section 2615 attack the legal sufficiency of a complaint?	016666.docx	LEGALCASE-00150334-LEGALCASE-00150335	SA, Sub	0.69	0	0	1	1	1
1892	Mabray, Sr., 316 Ga. App. 62	307A-622	"A complaint may be dismissed on motion for failure to state a claim if it is clearly without any merit, and this want of merit may consist in an absence of law to support a claim of the sort made, or of facts sufficient to make a good claim, or in the disclosure of some fact which will necessarily defeat the claim. West's Ga.Code Ann. § 9-11-2(b)(6).	A complaint may be dismissed on motion for failure to state a claim if it is clearly without any merit, and this want of merit may consist in an absence of law to support a claim of the sort made, or of facts sufficient to make a good claim, or in the disclosure of some fact which will necessarily defeat the claim. West's Ga.Code Ann. § 9-11-2(b)(6).	Can a complaint be dismissed on motion for failure to state a claim if it is clearly without any merit?	Perital Procedure - Memo # 8314 - C- M_388219.docx	ROSS-00284845-ROSS-00338346	SA, Sub	0.71	0	0	1	1	1
1893	Wright v. Texas Dept of Criminal Justice-Corrections Division, 137 S.W.3d 693	307A-581	A trial court's authority to dismiss for want of prosecution stems from rule 68a of the Texas Rules of Civil Procedure and from the court's inherent power. Williams, 137 S.W.3d at 693. A trial court can dismiss for want of prosecution only if the plaintiff fails to prosecute the case or party seeking affirmative relief fails to appear for any hearing or trial of which the party had notice, (2) when the case is not disposed of within the time standards of the supreme court, or (3) when the trial court finds that the case has not been prosecuted with due diligence. City of Houston v. Robinson, 837 S.W.2d 262, 264*05 (Tex.App.-Houston [1st Dist.] 1992, no writ). We review a trial court's order of dismissal for an abuse of discretion. Coleman v. Linaugh, 394 S.W.2d 857, 858 (Tex.App.-Houston [1st Dist.] 1966, no writ).	A trial court dismiss for want of prosecution under the following three situations: (1) when a party seeking affirmative relief fails to appear for any hearing or trial of which the party had notice, (2) when the case is not disposed of within the time standards of the supreme court, or (3) when the trial court finds that the case has not been prosecuted with due diligence. Vernon's Ann. Texas Rules Civ.Proc., Rule 165a.	Can court dismiss a case when the case has not been disposed of within the Supreme Court's time standard?	037190.docx	LEGALCASE-00150878-LEGALCASE-00150879	SA, Sub	0.48	0	0	1	1	1

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1894	Hughes v. Park, Park & Assoc., 738 A.2d 316	307A-602	The decision of whether to enter judgment of non pro is properly entered when (1) a party to the proceeding has shown a want of due diligence in failing to proceed with reasonable promptitude; (2) there is no competing reason for the delay; and (3) the delay has caused some prejudice to the adverse party.	Judgment of non pro is properly entered when (1) a party to the proceeding has shown a want of due diligence in failing to proceed with reasonable promptitude; (2) there is no competing reason for the delay; and (3) the delay has caused some prejudice to the adverse party.	Is judgment of non pro properly entered when a party to the proceeding has shown a want of due diligence in failing to proceed with reasonable promptitude?	Perital Procedure - Memo #8504 - C- MC.docx	LEGALCASE-0004050-LEGALCASE-0004051	Condensed SA	0.75	839	1	15,344	21,876	9,079
1895	See Broad v. United States, 52 Fed. Cl. 815	411-7	The Forest Service regulations provide that special use authorizations (not only impose conditions on an authorized user's privilege of using National Forest System land, but may also convey rights on that user. See 36 C.F.R. 251.14(c) ("Rights or privileges to occupy and use National Forest System lands under this subpart are conveyed only through issuance of a special use authorization."), 36 C.F.R. 251.15(b) ("All rights not expressly granted are retained by the United States, including but not limited to (3) the right to require common use of the land or to authorize the use by others in accordance with the National Forest Management Act and the regulations."), 36 C.F.R. 251.155(b) ("Special use authorizations are subject to all outstanding valid rights."), To the extent that a special use authorization grants rights to a permittee, it imposes obligations on the Forest Service to respect those rights. Therefore, Forest Service regulations grant Forest Supervisors express actual authority to enter into binding contracts. Even if the regulations are considered too ambiguous to support a finding of express actual authority, the issuance of special use authorizations is sufficiently "integral" to the land management duties of a Forest Supervisor to enter into binding contracts.	Forest Service regulations governing the issuance of special use authorizations grant Forest Supervisors express actual authority to enter into binding contracts; even if the regulations are considered too ambiguous to support a finding of express actual authority, issuance of special use authorizations is sufficiently "integral" to the land management duties of a Forest Supervisor to vest them with implied actual authority to enter into binding contracts. 36 C.F.R. 35.251.51, 251.52.	Does the Forest Supervisor have the authority to enter into contracts binding the government?	047550.docx	LEGALCASE-00151126-LEGALCASE-00151127	Order SA, Sub	0.63	1	0	1	1	1
1896	S.C. Dept of Transp. v. Hinson Family Holdings, 361 S.C. 649	200-712	By creating a formal judicial procedure for terminating a public right of way over land, Section 57-10 removes the uncertainty attending the common law of dedication and abandonment. It also ameliorates the risk of the courts' future decision regarding strict proof of dedication by mandating that the facts be "established." Now, under the provisions of City of Beaufort, 335 S.C. 319, 433 S.E.2d 875, 884 (CL App. 1992), DOT and the local municipality are indispensable parties that must be joined in an action to abandon a public road. Without their inclusion, they would not be bound by the decision or discharged from their maintenance duties or other obligations and liabilities. BancOhio Natl. Bank v. Nevada, 310 S.C. 323, 426 S.E.2d 773 (1993).	State Department of Transportation (DOT) and the local municipality are indispensable parties that must be joined in an action to abandon a public road; without their inclusion, they would not be bound by the decision or discharged from their maintenance duties or other obligations and liabilities. Code 2936.5 57-510.	Are the Department of Transportation and the local municipality indispensable parties that must be joined in an action to abandon a public road?	Highways - Memo 311 - BK_59404.docx	ROSS-00297660-ROSS-00297661	SA, Sub	0.58	0	0	1	1	1
1897	Gym Door Repairs v. Astoria Gen. Contracting Corp., 144 A.D.3d 1093	307A-622	On a motion to dismiss a complaint pursuant to CPLR 3211(a)(7), the court must "accept the facts as alleged in the complaint as true, accord plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (Leon v. Martinez, 84 N.Y.2d 83, 87'88; 634 N.Y.S.2d 972, 638 N.E.2d 511). While a court is "permitted to consider evidentiary material submitted by a defendant in support of a motion to dismiss pursuant to CPLR 3211(a)(7), [such material is not to be considered for purposes of] CPLR 3211(a)(7), [such material is not to be considered for purposes of] CPLR 3211(a)(7). The criterion is whether the [third-party plaintiff] has a cause of action, not whether [it] has stated one and, unless it has been shown that a material fact as claimed by the [third-party plaintiff] to be one is not a fact at all and unless it can be said that no significant dispute exists regarding it ... dismissal should not eventuate" (Weil v. East Sunset Park Realty, LLC, 101 A.D.3d 859, 859'860, 935 N.Y.S.2d 402, quoting Matter v. Gontong, 43 N.Y.2d 284, 594 N.E.2d 182, 372 N.E.2d 137). A court is not permitted to consider evidentiary material appropriately be granted "only where the documentary evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law" (Gochen v. Mutual Life Ins. Co. of N.Y., 98 N.Y.2d 314, 326, 746 N.Y.S.2d 858, 774 N.E.2d 1390; see Leon v. Martinez, 84 N.Y.2d at 88; 634 N.Y.S.2d 972, 638 N.E.2d 511; Mazur Bros. Realty, LLC v. State of New York, 59 A.D.3d 401, 402, 873 N.Y.S.2d 326).	While a court is permitted to consider evidentiary material submitted by a defendant in support of a motion to dismiss for failure to state a cause of action, where the motion is not converted to one for summary judgment, the criterion is whether the plaintiff has a cause of action, not whether it has stated one. McKinney's CPLR 3211(a)(7).	Where the motion is not converted to one for summary judgment, is the criterion whether the plaintiff has a cause of action, not whether it has stated one?	037597.docx	LEGALCASE-001511851-LEGALCASE-001511852	Condensed SA, Sub	0.79	0	1	1	1	1
1898	Zollo v. Comm'y of Correction, 133 Conn. App. 266	307A-680	The standard of review of a motion to dismiss is ... well established. In ruling upon whether a complaint survives a motion to dismiss, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader... The conclusions reached by the trial court in its decision to dismiss the petitioners' claims on matters of law are challenged. We must determine whether they are legally and logically correct ... and whether they find support in the facts in the record.	In ruling upon whether a complaint survives a motion to dismiss, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader.	In ruling upon whether a complaint survives a motion to dismiss, should a court take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations?	Perital Procedure - Memo #8739 - C- MC_60551.docx	ROSS-00293076-ROSS-00293077	Condensed SA	0.62	0	1	0	1	1

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1899	330 Acquisition Co. v. Capital City Bank, F.S.B., 235 A.2d 314	307A+480	As to plaintiff's breach of contract action against Regency, it is clear that the acts alleged are merely defenses to the plaintiff's claim for specific performance. Defendant cannot be held accountable for pursuing litigation to protect its rights in response to plaintiff's refusal to recognize defendant's half-interest in the mortgage participation agreement. Furthermore, the existence of an unambiguous written agreement setting forth the respective rights of the parties obviates the need to rely on evidence extrinsic to the contract or to indulge in factual determinations.	Existence of an unambiguous written agreement setting forth the respective rights of the parties, dictates the need to rely on evidence extrinsic to the contract or to indulge in factual determinations, is a motion to dismiss.	Does the existence of an unambiguous written agreement setting forth the respective rights of the parties, dictate the need to rely on evidence extrinsic to the contract or to indulge in factual determinations?	037748.docx	LEGALSE-00151855-LEGALAGE-00151856	SA, Sub	0.8	0	1	1	21,876	9,079
1900	James Ross Lumber Co. v. Union Banking & Tr. Co. of Du Bois, Pa., 432 Pa. 129	307A+602	The record raises the issue of whether this discretion may properly be exercised by a Court below after being set forth. A Court may properly enter a judgment of non pros, when a party to the proceeding has shown a want of due diligence in failing to proceed with reasonable promptitude and there has been no compelling reason for the delay, and the delay has caused some prejudice to the adverse party, such as the death of or unavailability of material witnesses. Minson v. First National Bank, 368 Pa. 211, 215, 77 A.2d 895; Alter v. Philadelphia National Bank, 367 Pa. 353, 359 A.2d 695; Hinkle v. Gibson, 310 Pa. 518, 175 A. 514.	Court may enter judgment of non pros, when party has shown want of due diligence in failing to proceed with reasonable promptitude and there has been no compelling reason for delay, and delay has caused some prejudice to adverse party, such as death of or unavailability of material witness.	Can court enter judgment of non pros where there is no compelling reason for delay?	037887.docx	LEGALSE-00152188-LEGALAGE-00152189	Condensed SA	0.54	0	1	0	1	
1901	Baker v. Noback, 112 Nev. 1106	307A+581	Pursuant to NRCF 41(e), a court must dismiss an action "unless such action is brought to trial within five years after the plaintiff has filed his motion to dismiss." The five-year rule is intended to compel expeditious determinations of legitimate claims. C.R. Fedrick, Inc. v. Nevada Tax Comm'n, 38 Nev. 387, 393, 849 P.2d 1372, 1374 (1992). Dismissal after five years is not proper where the plaintiff has shown due diligence in whether it is with or without prejudice. Home Sav. Ass'n v. Aetna Casualty & Sur. Co., 109 Nev. 558, 563, 854 P.2d 851, 854 (1993). We have held that the filing of an amended complaint is irrelevant to the calculation of the five-year period under NRCF 41(e). See, e.g., Johnson v. Harber, 94 Nev. 524, 525-27, 582 P.2d 800, 801-02 (1978); Volpert v. Papagna, 85 Nev. 437, 440, 456 P.2d 848, 850 (1969).	Rule requiring trial court to dismiss action unless it is brought to trial within five years is intended to compel expeditious determinations of legitimate claims; dismissal after five years is mandatory, and only discretionary aspect of dismissal is whether it is with or without prejudice. Rules Civ Proc., Rule 41(e).	"Is the rule requiring trial court to dismiss action unless it is brought to trial within five years, intended to compel expeditious determinations of legitimate claims?"	037921.docx	LEGALSE-00153249-LEGALAGE-00153250	Condensed SA	0.65	0	1	0	1	
1902	Nigard v. Snow Valley Homes & Health Sys., 731 N.W.2d 184	307A+679	"A motion to dismiss under SDC 1.15(c) (2)(b) tests the legal sufficiency of the pleading, not the facts which support it. For purposes of the pleading, the court must treat as true all facts properly pled in the complaint and resolve all doubts in favor of the pleader." Guttmiller v. Deloitte & Touche, LLP, 2005 SD 777, 4, 699 N.W.2d 493, 496. "[T]hese "motions are viewed with disfavor and seldom prevail." -- Eljer v. City of Rapid City, 2005 SD 45, 6, 695 N.W.2d 335, 238 (quoting Fenske Media Corp. v. United Corp., 2004 SD 212, 7, 679 N.W.2d 390, 392-93 (citations omitted)). A motion to dismiss is not proper where the facts as pleaded may be accepted as true." Janklow v. Viking Press, 378 N.W.2d 875, 877 (S.D.1985). A 12(b)(5) motion "does not admit conclusions of the pleader either of fact or law." Akron Savings Bank v. Charlson, 83 S.D. 251, 253, 158 N.W.2d 523, 524 (1968). Therefore, "[w]hile the court must accept allegations of fact as true when considering a motion to dismiss, the court is free to ignore legal conclusions, unsupported conclusions, unwarranted inferences and sweeping legal conclusions cast in the form of factual allegations." Eljer v. City of Rapid City, 2005 SD 45, 6, 695 N.W.2d 335, 238 (quoting Fenske Media Corp. v. United Corp., 2004 SD 212, 7, 679 N.W.2d 390, 392-93 (citations omitted)). We review the circuit court's ruling de novo with no deference to its determination. Eljer, 2005 SD 45 at 6, 695 N.W.2d at 238.	While a court must accept allegations of fact as true when considering a motion to dismiss, the court is free to ignore legal conclusions, unsupported conclusions, unwarranted inferences, and sweeping legal conclusions cast in the form of factual allegations. SDC 1.15-4-12(b).	"Is a court free to ignore legal conclusions, unsupported conclusions, unwarranted inferences, and sweeping legal conclusions cast in the form of factual allegations?"	Pertrial Procedure - Memo # 8885 - C- SN_60360.docx	ROSS-00328403-ROSS-00328402	SA, Sub	0.79	0	0	1	1	
1903	Bali v. City of Syracuse, 60 A.D.3d 1312	307A+681	"In determining motions to dismiss in the context of a CPLR article 78 proceeding, a court may not look beyond the petition and must accept all facts alleged as true, even where no answer or return has been filed. McKinney's CPLR 78(1) et seq.	In determining motions to dismiss in the context of an Article 78 proceeding, a court may not look beyond the petition and must accept all facts alleged as true, even where no answer or return has been filed. McKinney's CPLR 78(1) et seq.	"In determining motions to dismiss in the context of an Article 78 proceeding, can a court not look beyond the petition and must accept all allegations in the petition as true?"	Pertrial Procedure - Memo # 8939 - C- PL_00418.docx	ROSS-00328403-ROSS-00328401	SA, Sub	0.56	0	0	1	1	
1904	Brinkley v. V. Renee City, 85 Ill. App. 3d 621	307A+561	Plaintiff's first contention is specifically challenges the allegation in the complaint that defendant's motion to dismiss the "plaintiffs had actual or constructive knowledge of the airport development." A motion to dismiss based on lack of knowledge would be insufficient absent some allegation of knowledge since that doctrine does not apply unless the party against whom the defense is asserted has discovered or should have discovered the fact upon which his claim is based. (Perlin v. First National Bank of Chicago (1973), 15 Ill App.3d 784, 305 N.E.2d 236.) Plaintiffs object to the allegation, saying that there is no factual basis in the record or in the pleadings for the assertion that plaintiffs could have had such knowledge.	Motion to dismiss based on lack of knowledge is insufficient where some allegation of knowledge since that doctrine does not apply unless party against whom defense is asserted has discovered or should have discovered fact upon which his claim is based. S.H.A. ch. 110, § 48; Supreme Court Rules, Rule 191, S.H.A. ch. 110A, § 191.	Does motion to dismiss, doctrine of lack of knowledge, not apply unless party against whom defense is asserted has discovered or should have discovered fact upon which his claim is based?	Pertrial Procedure - Memo # 9174 - C- Rd.docx	LEGALSE-00043234-LEGALAGE-00043235	Condensed SA, Sub	0.56	0	1	1	1	

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1905	Ortolowski v. Civil Serv. Comm'n of City of Chicago, 3 Ill. App. 3d 551	35-63.415	An officer of the law must exercise the greatest degree of restraint in dealing with the public. He must not conceive that every threatening or insulting word, gesture, or motion amounts to disorderly conduct. It may be of such character or so provoked or conditioned as to be fully justified. City of Hessewille v. Hessewille, 48 Ill. App. 50; Pittenon v. City of Hessewille, 135 Ill. App. 135. A municipality has no authority to deprive any officer with autocratic power to order the summary arrest and incarceration of a citizen without warrant or process of law. If the municipality could, it would render the liberty of every one of its citizens subject to the arbitrary whim of a police officer. People v. McGinn, 341 Ill. 633, 638, 173 N.E. 754.	An officer of the law must exercise the greatest degree of restraint in dealing with the public and he must not conceive that every threatening or insulting word, gesture, or motion amounts to disorderly conduct, since it may be of such character or so provoked or conditioned as to be fully justified.	Should police officers conceive that every threatening word amounts to disorderly conduct?	014853.docx	LEGALCASE-00153913- LEGALCASE-00153914	Condensed, SA	0.63	839	15,344	34,873	21,876	9,029
1906	Conrad v. Univ. of Wash., 24519	52-42.243	Contract awarding financial aid to college football players for three years is not subject to renewal. The contract is not subject to renewal of the athletic scholarships; terms of contract requiring that university consider granting renewal of the assistant were not sufficiently definite to establish legitimate claim of entitlement. U.S.C.A. Const.Amend. 14.	Contract awarding financial aid to college football players for three years is not subject to renewal. The contract is not subject to renewal of the athletic scholarships; terms of contract requiring that university consider granting renewal of the assistant were not sufficiently definite to establish legitimate claim of entitlement. U.S.C.A. Const.Amend. 14.	Do student athletes have a property interest in their athletic scholarship?	016780.docx	LEGALCASE-00153806- LEGALCASE-00153807	Condensed, SA, Sub	0.52	0	1	1	1	1
1907	Ritterbusch v. Hol, 789 S.W.2d 491	307A+221	A petition is sufficient to withstand a motion to dismiss for failure to state a claim if it invokes substantive principles of law entitling plaintiff to relief and alleges ultimate facts informing defendant of that which plaintiff will attempt to establish at trial.	A petition is sufficient to withstand a motion to dismiss for failure to state a claim if it invokes substantive principles of law entitling plaintiff to relief and alleges ultimate facts informing defendant of that which plaintiff will attempt to establish at trial.	Is a petition sufficient to withstand a motion to dismiss for failure to state a claim if it invokes principles of substantive law?	038522.docx	LEGALCASE-00154469- LEGALCASE-00154470	SA, Sub	0.52	0	0	1	1	
1908	Austin v. Clark, 755 S.E.2d 796	307A+481	In deciding a motion to dismiss, all pleadings are to be construed most favorably to the party who filed them, and all doubts regarding such pleadings must be resolved in the filing party's favor. Anderson v. Flake, 267 Ga. 498, 501(2), 480 S.E.2d 10 (1997). In other words, (a) motion to dismiss for failure to state a claim should not be granted unless it appears that the complaint does not contain facts which, if true, would establish state of facts which could be proved in support of this claim. If within the framework of the complaint, evidence may be introduced which will sustain a grant of relief to the plaintiff, the complaint is sufficient.	Motion to dismiss for failure to state a claim should not be granted unless it appears to a certainty that the plaintiff would be entitled to no relief under any state of facts which could be proved in support of his claim; if, within the framework of the complaint, evidence may be introduced which will sustain a grant of relief to the plaintiff, the complaint is sufficient.	"If evidence is introduced which will sustain a grant of relief to the plaintiff, in the complaint sufficient?"	038594.docx	LEGALCASE-00154083- LEGALCASE-00154084	Condensed, SA	0.43	0	1	0	1	
1909	Coleman v. City of Mesa, 230 Ariz. 352	307A+481	In determining if a complaint states a claim on which relief can be granted courts must assume the truth of all well-pleaded factual allegations and indulge all reasonable inferences from those facts, but not assume the truth of the complaint's legal conclusions. A complaint pleading "truth" when alleging a Rule 12(b)(6) motion, i.e. if "matters outside this pleading" are considered, the motion must be treated as one for summary judgment. Ariz. R. Civ. P. 12(b)(6). A complaint's exhibits or public records regarding matters referenced in a complaint, are not "outside the pleading," and courts may consider such documents without converting a Rule 12(b)(6) motion into a summary judgment motion.	Complaint's exhibits, or public records regarding matters referenced in a complaint, are not outside the pleading, and courts may consider such documents without converting a motion to dismiss for failure to state a claim into a summary judgment motion. In A.U.S. Rules Civ.Proc., Rule 12(b)(6).	Are exhibits or public records appended to a complaint regarding matters within it not outside the pleading and can be considered by the courts without converting a motion to dismiss?	038617.docx	LEGALCASE-00154541- LEGALCASE-00154542	SA, Sub	0.59	0	0	1	1	
1910	Pederson v. Byrne, 292 P.3d 182	307A+481	We have implied in the past that courts may consider materials outside the pleadings on a motion to dismiss. If those materials are subject to "strict judicial notice," other authorities have found "strict judicial notice" to encompass statutes and regulations, matters of public record (including other court proceedings), and matters of common knowledge. But just as it does when converting a motion to dismiss, the court must give notice to the opposing party of its intent to take judicial notice and "afford him an opportunity to dispute the facts alleged and either to produce a motion for summary judgment or to produce a motion for summary judgment for failure to prosecute a trial under the circumstances. Schneck v. Parker, 388 S.W.2d 338, 541 (Mo.App.1965); State ex rel. State Highway Commission v. Milnes, 573 S.W.2d 727, 728 (Mo.App.1978). A fair test is whether the excepting party (here, appellant) had a reasonable opportunity to bring its exceptions to trial. Milnes, 573 S.W.2d at 728. When the lawowners moved for dismissal, the first case had been pending almost 12 years, and the second case had been pending almost 10 years. The lawowners' motion was denied and the case was tried during that time. Moreover, only one tract had been resolved in the first case since 1975, and only one tract had been resolved during a 5-year period, 1974 through 1978, in the second case. No settlements regarding any of the 24 tracts in issue had been submitted for the chief counsel's approval since 1978.	When considering materials outside the pleading on a motion to dismiss, the court must give notice to opposing party of its intent to take judicial notice and afford him opportunity to dispute facts judicially noticed.	"When considering materials outside the pleading on a motion to dismiss, should a court give notice to opposing party of its intent to take judicial notice?"	06525.docx	LEGALCASE-00096603- LEGALCASE-00096606	SA, Sub	0.66	0	0	1	1	
1911	State ex rel. Missouri Highways & Transp. Comm'n v. Kerney, 663 S.W.2d 864	307A+481	In deciding whether to order dismissal for failure to prosecute, trial court may consider not only the length of the delay but also attendant circumstances: a fair test is whether the excepting party had a reasonable opportunity to bring its exceptions to trial.	In deciding whether to order dismissal for failure to prosecute, trial court may consider not only length of delay, but attendant circumstances: a fair test is whether the excepting party had a reasonable opportunity to bring its exceptions to trial.	Will the court consider not only the length of the delay but also attendant circumstances in deciding whether to order dismissal for failure to prosecute?	Perital Procedure- Memo # 14565 - TM_00949.docx	ROSS-00259609-RO25- 00259610	Condensed, SA	0.74	0	1	0	1	

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1918	People Bank v. Fraze, 318 S.W.2d 121	307A-e88	People Bank claims that the circuit court erred in finding that Peoples Bank precluded its assertion within the Oklahoma court had jurisdiction to determine the merits of the claim. The court had jurisdiction in contested by the filing of a motion to dismiss. The plaintiff bears the burden of establishing that the defendant's contacts with the forum state were sufficient. State ex rel. Rami Assocs., Inc. v. Hartenbach, 742 S.W.2d 134, 137 (Mo. banc 1987). When the challenge to personal jurisdiction arises in the context of a motion to register a foreign judgment, however, the strong presumption of the validity of a foreign judgment that is regular on its face makes the general rule inapplicable.	Generally, when personal jurisdiction is contested by the filing of a motion to dismiss an action, the plaintiff bears the burden of establishing that the defendant's contacts with the forum state were sufficient.	"When personal jurisdiction is contested by the filing of a motion to dismiss an action, does the plaintiff bear the burden of establishing that the defendant's contacts with the forum state were sufficient?"	Pertrial Procedure - C-623892.docx	R055-00293937-AC055-00293938	Condensed SA	0.71	839	15,344	14,873	21,876	9,029
1919	First Nat. Bank of Loganport v. Logan Mfg. Co., 577 N.E.2d 949	156-5201	The doctrine of estoppel springs from equitable principles and is designed to aid the law in the administration of justice where, without its aid, injustice might result. Its purpose is to preserve rights previously acquired and not to create new ones. Popkowski v. Life of Indiana Ins. Co. (1989), Ind., 335 N.E.2d 1164, 1167 quoting State v. Mut. Life Ins. (1930), 175 Ind. 583, 175 N.E.2d 222. Appellate courts have held that a party is estopped from asserting a claim or defense if the party has previously changed its position to its detriment. "Travelers Ins. Co. v. Estelon (1941), 110 Ind.App. 143, 154, 17 N.E.2d 310, 314. Fraud need not be proven; "[I]t is sufficient if the conduct of the party has been knowingly such as would make it unconscionable on its part to deny what its conduct had induced another to believe and act upon in good faith and without knowledge of the facts." Pitcher v. Dove (1884), 99 Ind. 175, 177-78. See NEPS v. C-6 Land Corp. v. Thierber (1967), 251 Ind. 674, 681, 244 N.E.2d 644, 647.	Doctrine of estoppel springs from equitable principles and is designed to aid the law in the administration of justice where, without its aid, injustice might result. Its purpose is to preserve rights previously acquired and not to create new ones.	Does estoppel spring from equitable principles and is it designed to aid in the administration of justice where injustice might result?	017676.docx	LEGAL-00156078-LEGAL-00156079	Condensed SA	0.77	0	1	0	1	
1920	Burks v. Madyun, 105 Ill. App. 3d 917	307A-e87	In determining the legal sufficiency of a complaint on a motion to dismiss, all well-pleaded facts are to be taken as true (Fitzgerald v. Chicago Title & Trust Co. (1978), 72 Ill.2d 179, 20 Ill.Dec. 581, 380 N.E.2d 790) and a reviewing court must determine whether the allegations of the complaint, when interpreted in the light most favorable to plaintiff, are sufficient to state a claim for which relief may be granted. Farm Associates Inc. v. Sternbach (1978), 77 Ill. App.3d 249, 33 Ill.Dec. 722, 395 N.E.2d 1103.	In determining legal sufficiency of complaint on motion to dismiss, all well-pleaded facts are to be taken as true, and reviewing court must determine whether allegations of complaint, when interpreted in light most favorable to plaintiff, are sufficient to set forth cause of action upon which relief may be granted.	"In reviewing a motion to dismiss a complaint as untimely, will a reviewing court take all well-pleaded facts in a complaint as true and will not weigh the evidence?"	024476.docx	LEGAL-00155868-LEGAL-00155869	Condensed SA	0.41	0	1	0	1	
1921	Frederic v. Browning-Ferris Industries, 780 S.W.2d 844	307A-e81	Frederic first contends the trial court abused its discretion in dismissing the cause of action for want of prosecution. A trial court has the inherent authority to dismiss for want of prosecution any case not prosecuted with due diligence. State v. Haelebo, 671 S.W.2d 507, 508 '09 (Tex. 1984). An appellate court may only reverse a dismissal if the trial court abused its discretion. See, e.g., 508 S.W.2d 507, 508. See, e.g., Motor Co., 709 S.W.2d 273, 276 (Tex. App., Houston [14th Dist.] 1986, no writ). In determining whether to dismiss a cause for want of prosecution, a trial court may consider the entire history of the case, including the length of time the case was on file, the amount of activity in the case, the request for a trial setting, and the existence of reasonable excuses for delay. See Bard v. Frank B. Hall & Co., 767 S.W.2d 839, 843 (Tex. App., San Antonio [5th Dist.] 1989, no writ); NASH Business Center v. American Nat'l Ins. Co., 536 S.W.2d 818, 819 (Tex. App., Houston [1st Dist.] 1976, no writ); Corliss, 754 S.W.2d 152 (Tex. 1988).	In determining whether to dismiss cause for want of prosecution, trial court may consider entire history of case, including length of time case was on file, amount of activity in the case, request for trial setting and existence of reasonable excuses for delay.	What should court consider in determining whether to dismiss cause for want of prosecution?	Pertrial Procedure - Memo # 10044 - C-MG_62386.docx	R055-00281604-AC055-003281605	Condensed SA	0.75	0	1	0	1	
1922	City of Fort Wayne v. Sw. Allen City Fire Prot. Dist., 82 N.E.3d 499	307A-e84	In ruling on a motion to dismiss for lack of subject matter jurisdiction, the trial court may consider not only the complaint and motion but also any affidavits or evidence submitted in support. GHN Co. v. Magness, 744 N.E.2d 397, 400 (Ind. Ct. App. 2001). In addition, the trial court may weigh the evidence to determine the existence of the requisite jurisdictional facts. Ind. Ct. App. v. Trial P. 12.0 (12).	In ruling on a motion to dismiss for lack of subject matter jurisdiction, the trial court may consider not only the complaint and motion but also any affidavits or evidence submitted in support. In addition, the trial court may weigh the evidence to determine the existence of the requisite jurisdictional facts. Ind. Ct. App. v. Trial P. 12.0 (12).	"In ruling on a motion to dismiss for lack of subject matter jurisdiction, can the trial court consider not only the complaint and motion but also any affidavits or evidence submitted in support?"	Pertrial Procedure - Memo # 10067 - C-AC_62397.docx	R055-003319312	SA, Sub	0.43	0	0	1	1	
1923	Green v. Wiggins, 304 A.H. 484	241+18017	Of course, appellate's interpretation of Rule 4(i) is correct insofar as it goes, viz., if service of summons is not made upon a defendant within 120 days after the filing of the complaint, the action shall be dismissed without prejudice. However, the language of the rule does not apply to a defendant's motion to dismiss. See, e.g., Mack v. Mack, 100 A.H. 559, 785 S.W.2d 220 (1990); see also Cede v. First Nat'l Bank, 304 A.H. 26, 800 S.W.2d 412 (1990). However, that dismissal without prejudice language does not apply if the plaintiff's action is otherwise barred by the running of a statute of limitations. As we discussed earlier, Rule 4(i) provides a procedure in cases where service has not been achieved within the 120 day period whereby the court may, upon motion or its own initiative, extend the time for obtaining service so as to protect the plaintiff from being barred by a statute of limitations.	Under rule providing that, if service of summons is not made upon defendant within 120 days after filing of complaint, action shall be dismissed without prejudice, "without prejudice" language does not apply to a defendant's motion to dismiss. However, dismissal without prejudice is not a permanent bar to the action. Rules Civ. Proc., Rule 4(i).	"Does a rule provide that if service of the summons is not made upon a defendant within 120 days after filing of the complaint, the action shall be dismissed as to that defendant without prejudice upon motion?"	Pertrial Procedure - Memo # 10050 - C-TL_62177.docx	R055-00293937-AC055-00293932	Condensed SA, Sub	0.62	0	1	1	1	
1924	Vorheim v. Bellina, 865 So. 2d 489	307A-e90	We next consider whether lesser sanctions may have better served the interests of justice. Hoffman v. Paragroup Health Care Corp., 752 So.2d 1030, 1035 Miss. 1999). "Lesser sanctions include: fines, costs, or damages against plaintiff or his counsel, attorney disciplinary measures, conditional dismissal, dismissal without prejudice, and explicit warnings." Vorhies, 372 So.2d at 377 (limitations omitted).	Lesser sanctions than dismissal with prejudice for want of prosecution include fines, costs, or damages against plaintiff or his counsel, attorney disciplinary measures, conditional dismissal, dismissal without prejudice, and explicit warnings. Rules Civ. Proc., Rule 4(i).	"Do lesser sanctions than dismissal with prejudice for want of prosecution include fines, costs, or damages against plaintiff or his counsel, attorney disciplinary measures, conditional dismissal, dismissal without prejudice?"	024756.docx	LEGAL-00156190-LEGAL-00156191	SA, Sub	0.33	0	0	1	1	

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1925	Moore v. Romery, 329 Md. 426	3384+45	Contrary to the view of the Court of Special Appeals, a dismissal of the plaintiff in interstate commerce without prejudice is not a bar to any suit, complaint or file an amended complaint in the same action. Rather, the case is fully terminated in the trial court. Williams v. Snyder, Admir. 221 Md. 362, 246 P.2d 267, 155 A.2d 904, 906-907 (1959). The effect of the designation "without prejudice" is simply that there is no adjudication on the merits and that, therefore, a new suit on the same cause of action is not barred by principles of res judicata. Williams v. Snyder, Admir. supra, Md. 161, at 250-251; 135 A.2d at 904-905; 48 A.2d at 890-891; 281 A.2d at 1099, 1100, 752 A.2d 1327 (1997). A new suit might be barred on other grounds, such as limitations.	Dismissal of plaintiff's entire complaint, "without prejudice" does not mean that cases still pending in trial court and that plaintiff may amend his or her complaint. The trial court's dismissal of the entire complaint, without prejudice, is a final, appealable judgment. The effect of designation "without prejudice" is simply that there is no adjudication on the merits and that, therefore, a new suit on same cause of action is not barred by principles of res judicata.	Does a dismissal of the plaintiff's complaint without prejudice mean that the case is still pending in the trial court and that the plaintiff can amend his or her complaint in the same action?	Period Procedure - C-02008.docx SK_62418.docx	ROSS-00232649	SA, Sub	0.44	0	1	14,873	21,876	9,079
	Thomas v. Knight, 525 W.3d 292	307A+590	In this case, the court dismissed with prejudice as a bar to any suit, arising out of the same facts, brought by appellants against appellees. We held that a dismissal for failure to comply with the conditions set out in section 4-204 is not a dismissal on the merits, but rather an exercise of discretion. The court's dismissal of the suit was not a final judgment, and thus, it is not appealable. See Burton v. Herpel, 504 U.S. 25, 112 S.Ct. 1278, 118 L.Ed.2d 340 (1992) (dismissal of an inmate suit brought under the federal habeas corpus statute is not a dismissal on the merits, but it is merely an exercise of the trial court's discretion under the statute); Hickman v. Adams, 35 SW 3d 120, 124 (Tex.App. Houston 14th Dist. 2000, no pet.). When an appellate court reviews whether a trial court abused its discretion in dismissing an inmate suit, it should consider whether the suit was dismissed with prejudice and if the suit was, determine whether the inmate error could be remedied through more specific pleading.	When an appellate court reviews whether a trial court abused its discretion in dismissing a state prisoner's civil rights suit, it should consider whether the suit was dismissed with prejudice, and if it was, determine whether the prisoner's error could be remedied through more specific pleading. If the error could be remedied, the dismissal with prejudice is improper. V.T.C.A., Civil Practice and Remedies Code, § 14.004.	"When reviewing whether a trial court abused its discretion by dismissing an inmate suit with prejudice, should the appellate court consider whether the inmate error could be remedied with a more specific pleading?"	023005.docx	LEGAEASE-00157610- LEGAEASE-00157611	SA, Sub	0.58	0	1	1	1	
1926	Burton v. Allen, 628 So. 2d 814	307A+581	Dismissal of an action under Rule 41(b), Alabama Rules of Civil Procedure, is within the discretion of the trial court and will not be reversed absent an abuse of that discretion. Nash v. Cosby, 597 So.2d 209 (Ala. 1992). However, dismissal is a drastic sanction and is to be applied only in extreme situations. Cousins v. Wilson, 501 So.2d 1177 (Ala. 1986). Dismissal with prejudice is appropriate only when the trial court finds that there is a clear record of delay or contumacious conduct by the plaintiff or a serious showing of willful default. Id.; Smith v. Wilcox County Board of Education, 365 So.2d 659 (Ala. 1978)	Trial court may dismiss action, with prejudice, for lack of prosecution only when there is a clear record of delay or contumacious conduct by plaintiff or serious showing of willful default. Rule 41(b).	"Can a trial court dismiss an action, with prejudice, for lack of prosecution only when there is a clear record of delay or contumacious conduct by the plaintiff or a serious showing of willful default?"	023008.docx	LEGAEASE-00157650- LEGAEASE-00157651	SA, Sub	0.65	0	0	1	1	
1928	Burkes v. Fas-Chief Food Mart Inc, 217 W. Va. 291	307A+490	We therefore hold that under Rule 41(b) of the Rules of Civil Procedure (1986), if a plaintiff fails to serve a summons and complaint upon a defendant within 120 days, then the circuit court should dismiss the action against that defendant without prejudice. However, the circuit court shall extend the time for service if the plaintiff shows good cause for the failure. In the absence of a showing of good cause, upon motion or upon its own initiative, the circuit court may in its discretion extend the time for service. Factors circuit courts should consider in determining whether to extend the time for service, in the absence of a showing of good cause by the plaintiff, include but are not limited to: (1) whether the defendant excused service; (2) whether the defendant knowingly failed to comply with the Rules of Civil Procedure; (3) whether the defendant has been prejudiced by the failure to serve; and (4) whether the defendant has been prejudiced by the failure to serve. To the extent that State ex rel. Charleston Area Medical Center v. Kaufman, 197 W. Va. 382, 475 S.E.2d 374 (1996) conflicts with this holding, it is hereby overruled.	If a plaintiff fails to serve a summons and complaint upon a defendant within 120 days, then the circuit court should dismiss the action against that defendant without prejudice. However, the circuit court shall extend the time for service if the plaintiff shows good cause for the failure. Rules of Civil Procedure, Rule 4(b).	"If a plaintiff fails to serve a summons and complaint upon a defendant within 120 days, should then the circuit court dismiss the action against that defendant without prejudice?"	023041.docx	LEGAEASE-00156701- LEGAEASE-00156702	SA, Sub	0.71	0	0	1	1	
	Swenson v. Swenson, City of Martine, 159 N.W.2d 339	307A+581	Fourth, the plaintiff has the burden to prove that the defendant, Daal, NW 2d at 424, 155 So.2d at 271, was negligent. The defendant, Daal, NW 2d at 427, 155 So.2d at 273, 72 N.W.2d at 925. The defendant need only meet the plaintiff's step by step. Holmes, 403 N.W.2d at 31. Finally, dismissal of the cause of action for failure to prosecute should be granted when, after considering all the facts and circumstances of the case, the plaintiff can be charged with lack of due diligence in failing to proceed with reasonable promptitude. Opp. 458 N.W.2d at 136; Holmes, 403 N.W.2d at 31-32; Duncan, 382 N.W.2d at 427; 98adury.	Dismissal of the cause of action for failure to prosecute should be granted when the plaintiff can be charged with lack of due diligence in failing to proceed with reasonable promptitude.	"Should dismissal of a cause of action for failure to prosecute be granted when the plaintiff can be charged with lack of due diligence in failing to proceed with reasonable promptitude?"	Period Procedure - C-023041.docx SK_62987.docx	ROSS-00328846-0055- 00328847	Condensed SA	0.62	0	1	0	1	
1930	United States v. Nicklas, 713 F.3d 435	377E+211	To sustain a conviction under "§ 951(c), the government was required to prove the following elements: (1) Nicklas caused a transmission to be made in interstate commerce; (2) he did so knowingly; and (3) the transmission contained a threat to injure the person of another. See, e.g., DeArdo, 958 F.2d at 148. Nicklas stipulated to the first two elements, so the only issue for the jury was whether the September 28 fax contained a statement a reasonable recipient would interpret as a threat to injure the person of another. The government's evidence in this regard is a "factual context and also in the context of the totality of the circumstances in which the communication was made." Floyd, 458 F.3d at 849 (quoting United States v. Beltrichard, 994 F.2d 1318, 1323 (8th Cir. 1993) (addressing an analogous violation of § 976)).	To sustain a conviction for transmitting in interstate commerce any communication containing any threat to injure the person of another, the government is required to prove the following elements: (1) defendant caused a transmission to be made in interstate commerce; (2) he did so knowingly; and (3) the transmission contained any threat to injure the person of another. 18 U.S.C.A. § 875(c).	What is the government required to prove to sustain a conviction for transmitting in interstate commerce any communication containing any threat to injure the person of another?	046694.docx	LEGAEASE-00156917- LEGAEASE-00156918	Condensed SA, Sub	0.57	0	1	1	1	1

Appendix D

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Between Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
1388	Mohaddini, Doctors of Law & Legal Ethics, 196 Md.App. 435	307A-485	The trial court may resolve this second problem—the dichotomy between the opinion to affirm and the opinion to reverse—by applying the “with prejudice” rule. “With prejudice” permit a ruling of the words “with prejudice” prohibit refile. Generally speaking, a dismissal with prejudice is ordered in cases where the dismissal is based on an appraisal of the legal sufficiency of the claim. It touches the substantive merits of the case. A dismissal without prejudice, on the other hand, is more likely to be ordered in cases where the dismissal is based on some procedural glitch or lapse in the necessary formalities, something that does not touch the substantive merits of the case. In such cases, the court may not try. What is pertinent to the appellant’s plight in this case is that neither phrase has anything to do with whether he may or may not amend his original pleading.	A dismissal “without prejudice,” as opposed to a dismissal with prejudice, is more likely to be ordered in cases where the dismissal is based on some procedural glitch or lapse in the necessary formalities, something that does not engage the merits of the litigation and that can be readily rectified on the next try. Md. Rule 2-322.	“Is a dismissal “without prejudice” more likely to be ordered in cases where the dismissal is based on some procedural glitch or lapse in the necessary formalities?”	038865.docx	LEGAL-00159447- LEGAL-00159448	Condensed, SA, Sub	0.65	839	15,344	14,873	21,876	9,079
1399	474 W. 150th St. Realty Corp. v. Lewis, 166 Misc.2d 934	307A-697	A motion to restore may be treated by a court as a motion to vacate a dismissal for abandonment (Syndicate Bldg. Corp. v. Leiber, 159 A.D.2d 1092, 308 N.Y.S.2d 355; Cronin v. City of New York, 18 A.D.2d 995, 238 N.Y.S.2d 734) and present evidentiary facts establishing that he has a meritorious cause of action. (Hurley v. Neaux, 29 A.D.2d 789, 287 N.Y.S.2d 103; Sorrento v. Fisher, 20 A.D.2d 25, 245 N.Y.S.2d 186).	In order to have a dismissal for abandonment vacated and action restored to trial calendar, movant must show meritorious cause of action, and that the action restored to a trial calendar, should a movant show a meritorious cause of action?	“In order to have a dismissal for abandonment vacated and action restored to a trial calendar, should a movant show a meritorious cause of action?”	040060.docx	LEGAL-00160435- LEGAL-00160436	SA, Sub	0.55	0	0	1	1	1
1390	Shivell v. Missouri Edison Co., 535 S.W.2d 446	307A-583	Rule 402 authorizes a defendant to move for dismissal of a civil action on the ground that the plaintiff has failed to establish the elements of the claim. In addition, it is well settled that courts have inherent authority, in the exercise of sound judicial discretion, to dismiss a case for failure to prosecute with due diligence. The rule is stated in Edge v. Lemay Bank & Trust Co., 386 S.W.2d 398, 399 (Mo.1965), as follows: “The general rule is that courts have inherent power, in the exercise of sound judicial discretion, to dismiss a case for failure to prosecute with due diligence, and that the action thereon will not be disturbed on appeal.” (Mo.App., 286 S.W.2d 65, 68(2). See for like and benefit of Mandoli v. Holland Furniture Co., Mo., 337 S.W.2d 97, 90(3).”	General rule is that courts have inherent power in exercise of sound judicial discretion, to dismiss a case for failure to prosecute with due diligence and action thereon will not be disturbed on appeal unless such discretion was abused.	“Do courts have the inherent authority, in the exercise of sound judicial discretion, to dismiss a case for failure to prosecute with due diligence?”	Perital Procedure- Memo 13890 - C- KI_65476.docx	POSC-00037971-4055- 00379722	Condensed, SA	0.73	0	1	0	1	
1391	Campaign for Quality Educ. v. State, 209 Cal. Rptr. 3d 888	1.41E+13	State constitution vests legislature with sweeping and comprehensive powers in relation to public schools, including broad discretion to determine types of programs and services which further the purposes of education and to make and amend rules and regulations for the schools. School calendars, furnishing of textbooks, and the like. [per judgments, 1, --” 1.5. (Wilson, supra, 75 Cal App 4th p. 1334, 89 Cal Rptr 2d 795). Thus, Appellants’ assertion “that the legislature is not providing enough funding for education” is not a basis for a lawsuit.” (Grossmont, supra, 169 Cal App 4th p. 886, 86 Cal Rptr 2d 890; see California School Bds. Assn. v. State of California [2011], 392 Cal App 4th 770, 796, 121 Cal Rptr 3d 696 [“the formulation of a budget bill, including the items to be placed in the bill, is inherently a discretionary and legislative power,” and “the legislature’s authority to determine the content of the bill is broad, and beyond the interference of courts.”]; id. at p. 799, 121 Cal Rptr 3d 696 [“The California Constitution’s separation of powers doctrine forbids the judiciary from issuing writs that direct the legislature to take specific action, including to appropriate funds and pass legislation”].) Appellants raise “a public policy claim,” properly resolved in the halls of the legislature.” (Grossmont, supra, at p. 892, 86 Cal Rptr 2d 890.)	Do state constitutions delegate power to the legislature over the public school system?	“Do state constitutions delegate power to the legislature over the public school system?”	017255.docx	LEGAL-00161144- LEGAL-00161145	Condensed, SA, Sub	0.7	0	1	1	1	1
1392	Owczarkowski v. Pawlicki, 35 A.D.2d 773	307A-699	Upon a motion by a defaulting party to vacate an order of dismissal he must show a justifiable excuse for the default. (Inserra v. Porto, 33 A.D.2d 1092, 308 N.Y.S.2d 355; Cronin v. City of New York, 18 A.D.2d 995, 238 N.Y.S.2d 734) and present evidentiary facts establishing that he has a meritorious cause of action. (Hurley v. Neaux, 29 A.D.2d 789, 287 N.Y.S.2d 103; Sorrento v. Fisher, 20 A.D.2d 25, 245 N.Y.S.2d 186).	On motion by defaulting party to vacate order of dismissal he must show a justifiable excuse for the default and present evidentiary facts establishing that he has a meritorious cause of action.	“On a motion by a defaulting party to vacate order of dismissal, should he show a justifiable excuse for the default and present evidentiary facts establishing that he has a meritorious cause of action?”	Perital Procedure- Memo 14455 - C- SAG_65299.docx	POSC-000286349-4055- 00328650	Condensed, SA	0.54	0	1	0	1	
1393	Gohel v. Montgomery Hosp., 698 A.2d 653	307A-697	When reviewing a lower court’s denial of a petition to open a judgment of non pros, we must determine whether the lower court abused its discretion. Callura v. L & E Concrete Pumping, Inc., 454 Pa Super. 572, n. 2, 686 A.2d 392, 394-5 n. 2 (1996). To open a judgment of non pros, the petitioner must demonstrate to the trial court’s satisfaction that the following three elements are met: 1) a petition to open must be promptly filed; 2) the delay must be reasonably explained; 3) the merits must be shown. (Callura, supra, 454 Pa Super. at 572, n. 2; 686 A.2d at 392, 394-5 n. 2). Accordingly, we move to the second prong of our test whether appellants’ delay in prosecuting their cause of action was reasonably explained.	To open judgment of non pros, petitioner must demonstrate to trial court’s satisfaction that petition to open was promptly filed, delay was reasonably explained, and facts exist which support cause of action. Rules Civ.Proc., Rule 3051(b), 42 Pa.C.S.A.	“To open judgment of non pros(DNP), should a petitioner demonstrate to a trial court’s satisfaction that a petition to open was promptly filed?”	040007.docx	LEGAL-00161487- LEGAL-00161488	Order, SA, Sub	0.68	1	0	1	1	1
1394	Estelle v. Grandy, 827 S.W.2d 12	307A-697	Estelle predicates his entire argument on the language of rule 165(d) of the Texas Rules of Civil Procedure. This rule provides, in relevant part, that “[i]f a party fails to appear at a trial or hearing, the court may dismiss the party or its attorney was not intentional or the result of conscious indifference but was due to an accident or mistake....” Tex.R.Civ.P. 165(d)(3). However, rule 165(d)(3) applies only to cases dismissed for want of prosecution because of the failure of an attorney or party to appear for trial.	Rule requiring reinstatement of case dismissed for want of prosecution if failure of party or attorney was not intentional or result of conscious indifference but was due to an accident or mistake. Rule 165(d)(3) of Texas Rules of Civil Procedure. Rule 165(d)(3) applies only to cases dismissed for want of prosecution because of the failure of an attorney or party to appear for trial.	Can a case dismissed for want of prosecution be reinstated upon finding by a trial court that failure of party or its attorney to appear was not intentional?	040057.docx	LEGAL-00161521- LEGAL-00161522	SA, Sub	0.08	0	0	1	1	

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	City of Erie v. Peerless Heater Co., 660 A.2d 238	307A-637	In order to remove a judgment of non pros., (1) the motion to remove judgment must be promptly filed, (2) the delay in moving the case forward must be reasonably explained, and (b) facts must be shown to exist with supporting evidence of action, and (c) the party must show that the delay was caused by the party's own negligence. The court looks to three-prong test, whether party has shown lack of due diligence by failing to proceed with reasonable promptitude; there is no compelling reason for delay; and delay has caused prejudice to adverse party.	In order to determine whether or not delay in moving case forward is reasonable, for purposes of motion to remove judgment of non pros., court looks to three-prong test, whether party has shown lack of due diligence by failing to proceed with reasonable promptitude; there is no compelling reason for delay; and delay has caused prejudice to adverse party.	Does a court look to a three-prong test to determine whether or not a delay in moving case forward is reasonable?	040070.docx	LEGALCASE-00160594-LEGALCASE-00160595	SA, Sub	0.59	839	15,344	14,873	21,876	9,029
1945		307A-632	The standard for the grant of a Rule 65-2 motion to dismiss a complaint for failure to state a claim was set forth by our Supreme Court in Printre v. Mart-Morristown Corp., 316 N.J. 739, 563 A.2d 31 (1988). A court must test the adequacy of a pleading by determining whether a cause of action is suggested by the facts alleged in the complaint. If the facts, if true, would entitle the plaintiff to the relief sought, the court should grant the motion. Id. at 746, 563 A.2d 31. The plaintiff will be provided with the opportunity to amend his complaint if necessary. Id. For purposes of analysis plaintiffs are entitled to every reasonable inference of fact. The examination of a complaint's allegations of fact required by the aforementioned principles should be one that is at once painstaking and undertaken with a generous and hospitable approach." Id. (citation omitted).	In ruling on a motion to dismiss a complaint for failure to state a claim a court must test the adequacy of a pleading by determining whether a cause of action is suggested by the facts alleged in the complaint, without regard to the ability of the plaintiff to prove those facts. R. 4:6-2.		Pretial Procedure - Memo 11571 - C - BP_65348.docx	ROSS-003281057-R055-003281058	Condensed, SA	0.66	0	1	0	1	
1946		307A-655	A dismissal of a writ for failure to state a cause of action is a dismissal on the merits. ERC, Inc. v. Barnes, 137 N.H. 186, 624 A.2d 555 (1993). This rule is consistent with modern rules of pleading and particularly with our liberal doctrine of amendment. Id. To assure that the opportunity for amendment has practical meaning, however, the plaintiff must be given leave to amend the writ to correct perceived deficiencies before an adverse judgment is rendered. The trial court must allow the plaintiff opportunity to amend the writ before dismissing for failure to state a claim, allowing the plaintiff two chances to state a case before precluding the plaintiff from burdening the courts and opposing parties with further attempts. Id.	To assure that the opportunity for amendment has practical meaning, a plaintiff must be given leave to amend the writ to correct perceived deficiencies before an adverse judgment is rendered. Therefore, the trial court must allow the plaintiff opportunity to amend the writ before dismissing for failure to state a claim, allowing the plaintiff two chances to state a case before precluding the plaintiff from burdening the courts and opposing parties with further attempts.	"To assure that the opportunity for amendment has practical meaning, should a plaintiff be given leave to amend the writ to correct perceived deficiencies before an adverse judgment is rendered, the trial court must allow the plaintiff opportunity to amend the writ before dismissing for failure to state a claim, allowing the plaintiff two chances to state a case before precluding the plaintiff from burdening the courts and opposing parties with further attempts."	Pretial Procedure - Memo 11603 - C - SMG_65619.docx	ROSS-003281057-R055-003292860	Condensed, SA	0.37	0	1	0	1	
1947	Cambridge Mut. Fire Ins. Co. v. Cete, 150 N.H. 673	307A-650	However, it is generally recognized that courts have inherent power, independent of their authority to dismiss an action, to permit a party to amend its pleadings. The court has the discretion to grant or deny a motion to amend, and its exercise of this power is an unreasonable delay in serving summons, or on failure to comply with an order of the court or diligently prosecute his case. The right of the court to dismiss for want of prosecution must be determined in the light of the surrounding facts and circumstances and in the exercise of the sound discretion of the court.	Generally, courts have inherent power, independent of statute, to dismiss an action when it appears that a plaintiff has failed to prosecute its case. The court has the discretion to grant or deny a motion to amend, and its exercise of this power is an unreasonable delay in serving summons, or failure to comply with an order of the court or diligently to prosecute the case. R. C. S. 23:23.04, 23:23.05.	Does the court have the inherent power to dismiss independently of the rules of procedure when a plaintiff fails to prosecute to date with due diligence?	Pretial Procedure - Memo 11685 - C - SL_65403.docx	ROSS-003281057-R055-003273871	SA, Sub	0.36	0	0	1	1	
1948	Gray v. Gray, 102 Ohio App. 239	307A-683	Practice Book "14-304 permits a trial court to dismiss an action with costs if a party fails to prosecute the action with reasonable diligence. "The ultimate determination regarding a motion to dismiss for lack of diligence is within the sound discretion of the court." Nickerson v. Gashim, 185 Conn. 413, 415, 439 A.2d 379 (1981), overruled in part on other grounds by Morrell v. Manpower, Inc., 226 Conn. 831, 834, 628 A.2d 1311 (1993). "Under ["] 14-31, the trial court is confronted with gradations of diligence, and it is sound discretion, the court's sound discretion, to determine whether the plaintiff has exercised a "reasonable" section of the diligence spectrum." Iscondri v. AMF, Inc., 2005 Conn. 230, 234, 543 A.2d 728 (1998). Courts must remain mindful, however, that "[i]t is the policy of the law to bring about a trial on the merits of a dispute whenever possible"; Snow v. Callie, 174 Conn. 567, 574, 392 A.2d 440 (1978); and that "[o]ur practice does not favor the termination of proceedings without a determination of the merits of the controversy when that can be brought about with due regard to the interests of justice." Id. at 574, 392 A.2d 440 (1978).	Courts must remain mindful that it is the policy of the law to bring about a trial on the merits of a dispute whenever possible and that termination of proceedings without a determination of the merits of the controversy is not favored, where that can be brought about with due regard to necessary rules of procedure.	Should courts remain mindful that it is the policy of the law to bring about a trial on the merits of a dispute?	Pretial Procedure - Memo 11693 - C - SL_65412.docx	ROSS-003281057-R055-003280807	Condensed, SA, Sub	0.75	0	1	1	1	
1949	Robbin v. Salt The Search, 153 Conn. App. 716	307A-683	"We do not disturb a trial court order of dismissal for failure to prosecute absent an abuse of discretion and a likelihood that an injustice occurred." See also Charles B. Crozier Co. v. Leisure Sports, Inc., 740 P.2d 1358, 1370 (Utah, CL App.1987) ("This Court will not interfere with a trial court decision to dismiss for failure to prosecute unless it clearly appears that the court has abused its discretion and that there is a likelihood an injustice has been wrought." (citing Department of Soc. Servs. v. Romero, 609 P.2d 1323, 1324 (Utah 1980)). Under rule 41 of the Utah Rules of Civil Procedure, "a defendant may move for dismissal of an action... at any time, and the court may grant the motion if it appears that (b) in other words, it is well within a trial court's discretion to dismiss a case under rule 41 (b) when "a party fails to move forward according to the rules and the directions of the court, without justifiable excuse." Westinghouse Elec. Supply Co. v. Paul W. Larsen Contractor, Inc., 544 P.2d 876, 879 (Utah 1975) (citing Utah R. Civ. P. 37; Maxfield v. Fisher, 538 P.2d 1323, 1324-25 (Utah 1975)).	It is well within a trial court's discretion to dismiss a case for failure to prosecute when a party fails to move forward according to the rules and the directions of the court, without justifiable excuse. Rules Civ.Proc., Rule 37, 41(b).	Is it well within a trial court's discretion to dismiss a case for failure to prosecute when a party fails to move forward according to the rules and the directions of the court?	040031.docx	LEGALCASE-00161613-LEGALCASE-00161614	SA, Sub	0.8	0	0	1	1	
1950	PDC Consulting v. Porter, 136 P.3d 626	307A-683												

ROW	Judicial Opinion	WINS Topic + Key Number	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Between Opinion and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
1951	Caraballo v. Montefiore Med. Ctr., 89 A.D.3d 638	307A+457	To vacate an order dismissing an action pursuant to CPLR 32.16, "a plaintiff must show a reasonable cause for the failure to prosecute the action within the 90-day period to serve and file a motion to set aside the order." (see <i>Callaghan v. Fiedle</i> , 71 A.D.3d 520, 821 N.Y.S.2d 67 [2006], appeal dismissed 15 N.Y.3d 767, 906 N.Y.S.2d 811, 933 N.E.2d 210 [2010]; see <i>Unese v. Fidelis Care N.Y.</i> , 17 N.Y.3d 751, 929 N.Y.S.2d 67, 952 N.E.2d 1000 [2011]). Here, plaintiff failed to make any showing of merit.	To vacate an order dismissing an action for want of prosecution, a plaintiff must show a reasonable cause for the failure to prosecute the action within the 90-day period to serve and file a motion to set aside the order.	040565.docx	LEGALSE-00162482-LEGALSE-00162483	SA, Sub	0.55	0	1	1	21,876	9,079
1952	State v. Nielsen, 2000 ME 202	135H+493	A crucial aspect of double jeopardy is the right of the defendant to have a declaration of mistrial after a jury is impeded to prevent the government from attempting prosecution again on the same charges except in certain limited circumstances when the defendant consents to the mistrial, or a manifest necessity for the mistrial exists. <i>State v. Lundy</i> , 600 A.2d 101, 102 (Me.1991).	A declaration of mistrial after a jury is impeded to prevent the government from attempting prosecution again on the same charges except in certain limited circumstances when the defendant consents to the mistrial, or a manifest necessity for the mistrial exists. U.S.C.A. Const.Amend. 5; M.B.S.A. Const. Art. 1, § 8.	Double Jeopardy - Mistrial - C - 66970.docx	R055-002366173-R055-002366174	SA, Sub	0.48	0	0	1	1	1
1953	United States v. Aguilar-Arreola, 857 F.2d 18	135H+201	The Double Jeopardy clause of the Fifth Amendment protects a defendant in a criminal proceeding against multiple punishments or repeated prosecutions for the same offense. <i>United States v. Dintz</i> , 424 U.S. 600, 606, 96 S.Ct. 1075, 1079, 47 L.Ed.2d 207 (1976) (citing <i>United States v. Wilson</i> , 520 U.S. 332, 343, 95 S.Ct. 1013, 1021, 43 L.Ed.2d 231 [1975]; <i>North Carolina v. Pearce</i> , 395 U.S. 711, 717, 89 S.Ct. 2072, 2076, 23 L.Ed.2d 656 [1969]). However, the Double Jeopardy clause is not an absolute bar to multiple prosecutions. <i>United States v. Lundy</i> , 600 A.2d 101, 102 (Me.1991). The protection embodied in the Double Jeopardy Clause is a personal defense that may be waived or foreclosed by a defendant's voluntary actions or choices, including a request for or effectual consent to a mistrial. <i>Dipietro</i> , supra, 936 F.2d at 9.	Protection embodied in double jeopardy clause is personal defense that may be waived or foreclosed by defendant's voluntary actions or choices, including requests for or effectual consent to mistrial. U.S.C.A. Const.Amend. 5.	Double Jeopardy - Memo 327 - C - 66621.docx	R055-002366173-R055-002366174	SA, Sub	0.74	0	0	1	1	1
1954	United States v. McCauley, 721 F.3d 706	110+295	The constitutional protection against double jeopardy applies not only to the defendant's right to be free of double jeopardy, but also to the "valued right to have his trial completed by a particular tribunal." <i>Arizona v. Washington</i> , 434 U.S. 497, 503, 98 S.Ct. 824, 54 L.Ed.2d 717 (1978) (emphasis added) (quoting <i>Wade v. Hunter</i> , 336 U.S. 684, 685, 69 S.Ct. 834, 53 L.Ed.974 [1949]). Although "retial is not automatically barred when a criminal proceeding is terminated prematurely) ... the prosecutor must shoulder the burden of justifying the mistrial if he is to avoid the double jeopardy bar." <i>Id.</i> at 505; 98 S.Ct. 824, 54 L.Ed.2d 717 (1978) (emphasis added). The protection embodied in the Double Jeopardy Clause is a personal defense that may be waived or foreclosed by a defendant's voluntary actions or choices, including a request for or effectual consent to a mistrial. <i>Dipietro</i> , supra, 936 F.2d at 9.	Although mistrial is not automatically barred when a criminal proceeding is terminated prematurely, the prosecutor must shoulder the burden of justifying the mistrial if he is to avoid the double jeopardy bar. U.S.C.A. Const.Amend. 5.	015409.docx	LEGALSE-00163368-LEGALSE-00163369	SA, Sub	0.78	0	0	1	1	1
1955	People v. Cobb, 19 Ill. App. 3d 220	135H+451	While it is true that not every mistrial necessarily gives rise to a valid claim of double jeopardy, nonetheless the right not to be put twice in jeopardy for the same offense is a substantial right which should be zealously guarded. (<i>People v. Laws</i> , 29 Ill.2d 221, 393 N.E.2d 806.) Also, it has been established that to justify a declaration of a mistrial over the objection of a defendant under the <i>Perez</i> rule it must appear that an impartial verdict cannot be reached, or, if a verdict of conviction could be reached, that it would have to be reversed on appeal due to an obvious error. <i>Illinois v. Somerville</i> , 410 U.S. 458, 459 S.Ct. 1866, 35 L.Ed.2d 825.	Though not every mistrial necessarily gives rise to a valid claim of double jeopardy, is a right not to be put twice in jeopardy for the same offense a substantial right which should be zealously guarded?"	015545.docx	LEGALSE-00163379-LEGALSE-00163370	Condensed SA	0.7	0	1	0	1	1
1956	Morris v. First Nat. Bank of Mission, 249 S.W.2d 269	260+79, 110+9	The Supreme Court in <i>State Nat. Bank of Corpus Christi v. Morgan</i> compared the attributes of a royalty with the type of payment there concerned. We think we should follow that safer approach, inasmuch as the terms, "rents," "bonus" and "royalty" are better described than defined. With the reservation that special terms of a particular lease may change the usual rule, we think that ordinarily the terms have some meaning in the context of the particular lease. The term "royalty" is usually expressed as a fractional interest. <i>Belgian Oil Co. v. Wier</i> , Franklin Petroleum Corporation, Tex. Civ. App., 209 S.W.2d 376, 379. The fraction is usually a one-eighth. <i>State Nat. Bank of Corpus Christi v. Morgan</i> , supra, Sheppard Oil & Gas Co., supra. But parties may anticipate and provide against instances where production or marketing are thwarted by permitting a substitute for the usual royalty. <i>Freeman v. Magoola Petroleum Co.</i> , supra, Shell Oil Co. v. Goodline, 199 App. 359, 154 S.W.2d 359. The usual method of payment of a lease apart from lease to be paid on production is the payment of a lease consideration of the lease, and is a sum of money paid upon execution of a lease or agreed to be paid at some later date, usually out of the lessee's share of the first oil produced from the land." 3 Summers, Oil & Gas, § 571; <i>State Nat. Bank of Corpus Christi v. Morgan</i> , supra. Bonus is frequently computed at a cash amount per acre. Rental is ordinarily an annual cash amount computed on an acreage basis.	The "bonus" provided for in oil and gas lease represents market value of lease apart from royalties to be paid on production and other considerations under the lease, and is a sum of money paid upon execution of a lease or agreed to be paid at some later date, usually out of the lessee's share of first oil produced from the land, and is frequently computed at a cash amount per acre.	021692.docx	LEGALSE-00163311-LEGALSE-00163312	Condensed SA, Sub	0.75	0	1	1	1	1

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ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Between Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
1962	State v. McCallan, 149 N.W. 2d 7	135H+30	We have not decided whether the New Hampshire Constitution's Double Jeopardy Clause applies when the state initiates a prosecution after a prior conviction has been reversed. In <i>State v. McCallan</i> , 149 N.W. 2d 7, 11 (N.H. 1967), the Court held in <i>McCallan</i> , 149 N.W. 2d 7, 11, 138 S.Ct. 2346, 441 L.Ed.2d 615 (1998), that the federal Constitution's Double Jeopardy Clause "does not preclude retrial on a prior conviction allegation in the noncapital sentencing context." The United States Supreme Court affirmed the decision. It first noted that it had "historically . . . found double jeopardy protections inapplicable to sentencing proceedings because the defendant at issue 'do[es] not place a defendant in jeopardy for the first time' and the state 'do[es] not place a defendant in jeopardy for the first time' (quoting <i>State v. McCallan</i> , 149 N.W. 2d 7, 11 (N.H. 1967)). The Court also noted that "[a]n enhanced sentence imposed on a persistent offender . . . is not to be viewed as either a new jeopardy or additional penalty for the earlier crime, but as a stiffened penalty for the latest crime, which is considered to be an aggravated offense because a repetitive one." <i>Id.</i>	Any failure by the state to present sufficient proof of defendant's prior conviction concerning, upon which prior provisions state an enhancement on remand for noncapital sentencing, where original sentencing determination did not put defendant in jeopardy for an offense. Const. Pt. 1, Art. 16, RSA 632-A:10-a.	"Does failure by the state to present sufficient proof of defendant's prior conviction at sentencing preclude retrial on a prior conviction allegation in the noncapital sentencing context? If so, original sentencing determination did not put defendant in jeopardy for an offense?"	Double Jeopardy- Memo 1216 - C- RF.docx	LEGAL/ASE-00054157- LEGAL/ASE-00054158	Condensed, SA, Sub	0.64	839 0	15,344 1	14,873 1	21,876 1	9,079 1
1963	State v. Guillaume, 293 Mont. 224	135H+30	Thus, as we have done in the past, we again refuse to reach back, step with the United States Supreme Court in interpreting the protection afforded by the double jeopardy provision of Article II, Section 25 of the Montana Constitution. We hold that Article II, Section 25 of the Montana Constitution affords greater protection against multiple punishments for the same offense than does the Fifth Amendment to the United States Constitution. We further hold that application of the weapon enhancement statute to felony convictions where the underlying offense is a felony conviction violates the double jeopardy provision of Article II, Section 25 of the Montana Constitution.	Application of weapon enhancement statute to felony convictions where underlying offense requires proof of use of weapon violates the double jeopardy provision of Montana Constitution. Const. Art. 2, § 25, MCA 46-18-211(1, 4).	Does application of weapon enhancement statute to felony convictions where underlying offense requires proof of use of weapon violate the double jeopardy provision of Constitution?	Double Jeopardy- Memo 1225 - C- SS, 67862.docx	ROSS-002823239-K055-003982810	Condensed, SA	0.67	0 1	0 1	0 1	0 1	0 1
1964	Mayo v. W. Virginia Secondary Sch. Activities Comm'n, 223 W. Va. 88	97-4226	Due process protections were inapplicable to rule promulgated by Secondary Schools Activities Commission (SSAC) that lacked an administrative review process before imposing a multi-game suspension sanction on a student athlete, as there was no constitutionally protected interest attached to participation in interscholastic sports. U.S.C.A., Const. Amend. 14. Interscholastic sports obviates the necessary predicate for requiring procedural due process protections before instituting SSAC sanctions. Because the due process protections that the trial court found lacking were inapplicable, it follows that the rulings which were premised on the lack of such protections are not sustainable. Thus, the circuit court's attempted 3 to declare SOAC Rule 227-9 "15.3 unconstitutional for lacking in due process review process necessary for imposing a multi-game suspension sanction is without any basis in the law.	Due process protections were inapplicable to rule promulgated by Secondary Schools Activities Commission (SSAC) that lacked an administrative review process before imposing a multi-game suspension sanction on a student athlete, as there was no constitutionally protected interest attached to participation in interscholastic sports. U.S.C.A., Const. Amend. 14.	Does an athletics association violate due process or the Equal Protection clause when it imposes a suspension upon a student athlete?	017293.docx	LEGAL/ASE-00164311- LEGAL/ASE-00164312	Condensed, SA, Sub	0.65	0 1	0 1	0 1	0 1	0 1
1965	State v. Cramer, 161 S.W.3d 420	135H+99	Specifically, a court may declare a mistrial sua sponte and retry the defendant without violating the double jeopardy clause if the declaration of mistrial meets the "manifest necessity" doctrine. See <i>State v. Smith</i> , 988 S.W.2d 71, 80 (Mo.App.1999). But another way, a declaration of mistrial is not required and subsequent retrial will not violate double jeopardy if justice would not require otherwise by continuation of the original proceedings. See <i>id.</i>	A court may declare a mistrial sua sponte and retry the defendant without violating the double jeopardy clause if the declaration of mistrial meets the manifest necessity doctrine. U.S.C.A. Const. Amend. 5.	Can a court declare a mistrial sua sponte and retry the defendant without violating the double jeopardy clause if the declaration of mistrial meets the manifest necessity doctrine?	041018.docx	LEGAL/ASE-00164317- LEGAL/ASE-00164318	SA, Sub	0.53	0 0	0 0	1 1	1 1	1 1
1966	State v. C.J.F., 183 S.W.3d 841	135H+59	The doctrine of double jeopardy, which is derived from the Fifth Amendment to the Constitution of the United States and applied to the states through the Fourteenth Amendment, prohibits a state from placing a defendant in jeopardy twice for the same offense. See generally <i>Critt v. Bredt</i> , 437 U.S. 28, 98 S.Ct. 2356, 57 L.Ed.2d 24 (1978); <i>Bredt v. Jones</i> , 988 S.W.2d 71, 80 (Mo.App.1999). But another way, a declaration of mistrial is not required and subsequent retrial will not violate double jeopardy if justice would not require otherwise by continuation of the original proceedings. See <i>id.</i>	A defendant's valued right to have his trial completed by a particular tribunal is within the protection of the constitutional guarantee against double jeopardy, because that right lies at the foundation of the federal rule that jeopardy attaches when the jury is empaneled and sworn. U.S.C.A. Const. Amend. 5.	Is a defendant's right to have his trial completed by a particular tribunal within the protection of the constitutional guarantee against double jeopardy?	Double Jeopardy- Memo 1054 - C- BP_67876.docx	ROSS-002823239-K055-003196801	SA, Sub	0.82	0 0	0 0	1 1	1 1	1 1
1967	Wicks v. Edmondson, 472 F.3d 1227	135H+95.1	Instead, the Court has recognized "that a defendant's valued right to have his trial completed by a particular tribunal must in some instances be sacrificed to the government's interest in obtaining a final judgment." <i>Id.</i> at 689, 95 S.Ct. 824. Nevertheless, because a criminal defendant's right to have his trial completed by a particular tribunal is substantial, and any mistrial in justifying a mistrial over the defendant's objection if the double jeopardy bar is to be avoided, the prosecution must overcome a heavy burden in justifying a mistrial over the defendant's objection if the double jeopardy bar is to be avoided. <i>Washington</i> , 434 U.S. at 505, 98 S.Ct. 824. That heavy burden is this: the prosecution must demonstrate "manifest necessity" for any mistrial. <i>Id.</i>	Because a criminal defendant's right to have his trial completed by a particular tribunal is substantial, and any mistrial frustrates that right, the prosecution must overcome a heavy burden in justifying a mistrial over the defendant's objection if the double jeopardy bar is to be avoided. U.S.C.A. Const. Amend. 5.	Should the prosecution overcome a heavy burden in justifying a mistrial over the defendant's objection if the double jeopardy bar is to be avoided?	010018.docx	LEGAL/ASE-00165736- LEGAL/ASE-00165737	SA, Sub	0.56	0 0	0 0	1 1	1 1	1 1

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1976	Browning-Ferris Indus. of S.W. v. Dancie, 671 S.W.2d 801.	21646	It is understandable that the County Court seeks to require a landfill operator to carry the expense of inspection in determining whether the landfill operator is negligent. The County Court's decision is based on the fact that the landfill operator is in a better position to know the volume of business.	In exercising inspection authority through the police power, municipal corporation may impose license fees, permanent fees, or taxes to cover the cost of inspection by a full amount of an amount based upon volume of business.	"While exercising inspection authority through a police power, can municipal corporations impose license, permit fees, or taxes to recover their costs of inspection?"	Inspection - Memo 11 - 31.docx	ROSS-00326281-ROSS-00335383	Condensed, SA	0.84	839	15,344	14,873	21,876	9,079
										0	1	0	1	
1977	Hires v. Georgeson, 191 Cal.App. 4th 681.	307A4552	The appellate court in <i>Shieh</i> did not purport to apply section 391.7 in accordance with its terms; indeed, the court expressly noted that in the case of a writ of habeas corpus, the writ is available to a person. (In re Shieh supra, 17 Cal.App.4th at 1,167, 21 Cal.Rep.2d 886.) A court has inherent power upon a sufficient factual showing to dismiss an action "shown to be sham, fictitious or without merit in order to prevent abuse of the judicial process." (Muller v. Tanner (1989) 2 Cal.App.3d 438, 443, 82 Cal.Rptr. 734, quoting from <i>Unicomb v. Dicks</i> (1958) 162 Cal.App.2d 625, 629-630, 328 P.2d 493.) That power, exercised after a hearing and upon sufficient factual showing, is a judicial function and is not a ministerial power granted by section 391.7.	A court has inherent power, upon a sufficient factual showing, to dismiss an action shown to be sham, fictitious or without merit in order to prevent abuse of the judicial process.	"Does court have power to dismiss an action when it is shown to be sham, fictitious or without merit in order to prevent abuse of the judicial process?"	11349.docx	LEGAL/ASE-00094191-LEGAL/ASE-00094192	Condensed, SA	0.78	0	1	0	1	
										0	0	1	1	
1978	Cauby v. Nw. Utilities, 249 Conn. 865.	41341	"Connecticut first adopted a statutory scheme of workers' compensation in 1913. The purpose of the Workers' Compensation Act - General Statutes - § 31-275 et seq.; is to provide compensation for injuries arising out of and in the course of employment, regardless of fault. <i>Blagoderov v. Turner</i> , 156 Conn. 276, 279, 240 A.2d 886 (1968). Under the statute, the employer surrenders his right to bring a common law action against the employee in return for a common law action against the employee for a relatively quick and certain compensation. C.G.S.A. § 31-275 et seq.	Under Workers' Compensation Act, employee surrenders his right to bring common law action against employer, thereby limiting employer's liability to the statutory amount, and in return, employee is compensated for his losses without having to prove liability; Act compromises employee's right to common law tort action for work-related injuries in return for relatively quick and certain compensation. C.G.S.A. § 31-275 et seq.	"Under the Workers' Compensation Act, does an employee surrender his right to bring a common law action against the employer by limiting the employer's liability to the statutory amount?"	048176.docx	LEGAL/ASE-00126893-LEGAL/ASE-00126893	SA, Sub	0.79	0	0	1	1	
										0	0	1	1	
1979	Budget Charge Accounts v. Peters, 213 Ga. 17.	30244(3)	No cause of action is stated in a petition which states mere legal conclusions of conspiracy, collusion, and fraud with no facts alleged upon which to base them except general allegations of conspiracy, collusion, and fraud without alleging specific facts. 311 A. 753 (C.C. 92-6136).	A petition which states mere legal conclusions of conspiracy, collusion, and fraud with no facts alleged upon which to base them except general allegations of conspiracy, collusion, and fraud without alleging specific facts. 311 A. 753 (C.C. 92-6136).	"Is a cause of action stated in a petition which states mere legal conclusions of conspiracy, collusion, and fraud without alleging facts?"	Pleading - Memo 286 - 038003.docx	ROSS-00330087-ROSS-00330087	SA, Sub	0.03	0	0	1	1	
										0	0	1	1	
1980	Farmers Auto. Ins. Ass'n v. Neumann, 2015 IL App (1st) 140026.	307A4579	Section 2-613(b) of the Code provides that the facts constituting an affirmative defense, which includes "any defense which by other action set forth in the complaint," must be pleaded by the defendant in the answer to the complaint. The facts constituting an affirmative defense are the same as those facts constituting an affirmative defense. The facts constituting an affirmative defense are the same as those facts constituting an affirmative defense.	Is the test for determining the factual sufficiency of an affirmative defense the same as that applied in deciding a motion to dismiss?		038003.docx	LEGAL/ASE-00152768-LEGAL/ASE-00152769	SA, Sub	0.54	0	0	1	1	
										0	0	1	1	

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1981	Broadstone Realty Corp. v. Evans, 213 F. Supp. 261	1708+2405	It is well established that "with respect to the diversity jurisdiction of the federal courts, citizenship has the same meaning as domicile. It imports permanent residence in a particular state with the intention of remaining. Residence alone is not the equivalent of citizenship, although the place of residence is prima facie the domicile, and citizenship is not necessarily lost by protracted absence from home where intention to return remains. 28 U.S.C.A. § 1331(a).	With respect to diversity jurisdiction of federal courts, "citizenship" has the same meaning as domicile and it imports permanent residence in a particular state with intention of remaining; residence alone is not equivalent of citizenship, although place of residence is prima facie the domicile, and citizenship is not necessarily lost by protracted absence from home where intention to return remains. 28 U.S.C.A. § 1331(a).	"Is residence not the equivalent of domicile, although it is prima facie evidence of domicile?"	01.0550.docx	LEGALISE-00164176-LEGALISE-00164177	SA, Sub	0.45	839	15,344	14,873	21,876	9,029
	Iacovo v. Japan Line, Ltd., 89 A.D.2d 948	307A-581	Assuming a violation of a preclusion order may be deemed a "neglect to prosecute," which would bar a second action pursuant to CPLR 205(a) even if the judgment dismissing the first action was not on the merits, CPLR 205(a) "cannot be applied in such a way as to shorten the period otherwise available to the plaintiff" (U.S. Fidelity & Guaranty Company v. E.W. Smith Company, 46 N.Y.2d 498, 505, 434 N.Y.S.2d 672, 387 N.E.2d 604). Plaintiff commenced the action within the Statute of Limitations, with respect to the claim based on breach of warranty of seaworthiness. Therefore, the negligence theory of liability should also go forward (CPLR 213; see LeGate v. Panamalg, 221 F.2d 689) and the second branch of defendant's motion seeking to dismiss the complaint as time-barred should also have been denied.	Even if a violation of a preclusion order may be deemed a "neglect to prosecute," which would bar a second action even if the judgment dismissing the first action was not on the merits, that rule cannot be applied in such a way as to shorten the period otherwise available to the plaintiff. McKinney's CPLR 205(a).	Can a rule be applied in such a way as to shorten the period otherwise available to the plaintiff?	Prtrial Procedure - Memo 11844 - C - TM_61159.docx	R055-003280916-R055-00338007	SA, Sub	0.61	0	0	1	1	
1983	In re Wiley, 418 B.R. 331	366+2	In Dargatzis v. Co. v. Harman, 198 F.3d 1005, 73, 124 N.W.2d 634, 631, 954 F.2d 56, 63 (1997), the New Mexico Supreme Court discussed the concept of subrogation. Subrogation "is an equitable remedy of civil law origin whereby through a supposed succession to the legal rights of another, a loss is put ultimately on that one who in equity and good conscience should pay it. It is a remedy for the benefit of one secondarily liable, who has paid the debt of another and to whom in equity and good conscience should be assigned the rights and remedies of the original creditor."	Under New Mexico law, "subrogation" is a remedy for benefit of one secondarily liable, who has paid debt of another, and to whom in equity and good conscience should be assigned the rights and remedies of original creditor.	"Is subrogation a remedy for the benefit of one secondarily liable, who has paid the debt of another, and to whom in equity and good conscience should be assigned the rights and remedies of original creditor?"	Subrogation - Memo 11844 - C - 349 - RG.docx	R055-003280916-R055-00338002	SA, Sub	0.61	0	0	1	1	
	SPS Dev. Co. v. DS Enterprises of Palm Beaches, 970 So. 2d 495	307A-551	As to the 2004 order dismissing the complaint with prejudice, we reverse on the authority of Kozi v. Osterdorf, 02-50-24817 (Fla.1993). Although a trial court has the discretionary power to dismiss a complaint if the plaintiff fails to timely file an amendment, id. at 817, "because dismissal is the ultimate sanction in the adversarial system, it should be reserved for those aggravating circumstances in which a lesser sanction would fail to achieve a just result." Id. at 818.	Although a trial court has the discretionary power to dismiss a complaint if the plaintiff fails to timely file an amendment, because dismissal is the ultimate sanction in the adversarial system, it should be reserved for those aggravating circumstances in which a lesser sanction would fail to achieve a just result.	Does a court have the discretionary power to dismiss a complaint if the plaintiff fails to timely file an amendment? Those aggravating circumstances in which a lesser sanction would fail to achieve a just result.	Prtrial Procedure - Memo 11844 - C - DA_66448.docx	R055-003280916-R055-00338025	SA, Sub	0.35	0	0	1	1	
1985	Mid-Continent Ins. Co. v. Liberty Mut. Ins. Co., 236 S.W.3d 765	366+1	There are two types of subrogation. See id. at 551. Contractual (or conventional) subrogation is created by an agreement or contract that grants the right to pursue reimbursement from a third party in exchange for payment of a loss, while equitable (or legal) subrogation does not depend on contract but arises in every instance in which one person, not acting voluntarily, has paid a debt for which another was primarily liable. See, e.g., American States Ins. Co. v. American States Ins. Co., 869 S.W.2d 537, 542 (Tex.App.-Corpus Christi 1993), writ denied; see also Lee R. Rust & Thomas F. Segalla, 16 Couch on Insurance "223.1" (3d ed.2005). In either case, the insurer stands in the shoes of the insured, obtaining only those rights held by the insured against a third party, subject to any defenses held by the third party against the insured. See Interstate Fire Ins. Co. v. First Tape, Inc., 817 S.W.2d 142, 145 (Tex.App.-Houston [1st Dist.] 1993), writ denied; Int'l Ins. Co. v. Med-Profit Bldg. of Corpus Christi, 405 S.W.2d 867, 869 S.Ct. Couch on Insurance "222.5. Privy of contract between the insurers is not necessary. Phelps v. Faqua, 32 S.W.2d 660, 663 (Tex.Civ.App.-Amarillo 1930), writ ref'd.	Does equitable subrogation apply in instances in which one person not acting voluntarily has paid a debt for which another is primarily liable, which in equity should have been paid by the latter?	Does equitable subrogation apply in instances in which one person not acting voluntarily has paid a debt for which another is primarily liable and which in equity should have been paid by the latter?	Subrogation - Memo 1155 - AMG C.docx	R055-003280916-R055-00338083	SA, Sub	0.79	0	0	1	1	
	State, Dept of Transp. v. Douglas Asphalt Co., 297 Ga. App. 470	30+3209	"The admission of evidence, including a ruling on a motion in limine, is a matter resting within the sound discretion of the trial court, and an appellate court will not disturb the exercise of that discretion absent evidence of its abuse."	The admission of evidence, including a ruling on a motion in limine, is a matter resting within the sound discretion of the trial court, and an appellate court will not disturb the exercise of that discretion absent evidence of its abuse.	"Is the admission of evidence, including a ruling on a motion in limine, a matter resting within the sound discretion of the trial court, and an appellate court will not be disturbed absent evidence of abuse?"	Prtrial Procedure - Memo # 6136 - C - 580.docx	R055-003280916-R055-00338030	SA, Sub	0.64	0	0	1	1	
1986	State v. N. Atl. Ref. Ltd., 160 N.H. 275	307A-554	When evaluating a defendant's motion to dismiss for lack of personal jurisdiction, the standard of review varies according to the procedural posture of the case. Bolt v. Gar-Tec Products, Inc., 867 F.2d 671, 674-78 (1st Cir.1993); see 38 C. Wright & A. Miller, Federal Practice & Procedure Civil" 1351, at 274 (3d ed. 2000). When, as in this case, the trial court rules upon the motion without holding an evidentiary hearing, the trial court applies a "prima facie" standard, and we review the trial court's decision de novo. United States v. Swiss American Bank, Ltd., 274 F.3d 610, 618 (1st Cir.2001); see O'James v. Atlas Aircraft Center, Inc., 669 F.Supp.2d 167, 169-70, 172 (D.N.H.2009) (applying prima facie standard after having granted plaintiff jurisdictional discovery); Vi. Wholesale Bldg. Prods. v. J.W. Jones Lumber Co., 154 N.H. 625, 628, 934 A.2d 818 (2008); Wright & Miller, supra at 275, 286-88.	When the trial court rules upon the motion to dismiss for lack of personal jurisdiction without holding an evidentiary hearing, the trial court applies a prima facie standard, and the appellate court reviews the trial court's decision de novo.	When the trial court rules upon the motion to dismiss for lack of personal jurisdiction without holding an evidentiary hearing, the trial court applies a prima facie standard, and the appellate court reviews the trial court's decision de novo.	Prtrial Procedure - Memo # 6071 - C - PB.docx	R055-003280916-R055-00338037	SA, Sub	0.74	0	0	1	1	
1987														

Appendix D

Application of

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences	
1999	Brentwood Med. Assocs. v. United Mine Workers of Am., 396 F.3d 237	25+113	The Federal Arbitration Act codifies Congress' desire to uphold private arbitration agreements that produce prompt and fair dispute resolution without involving the courts. In furtherance of this interest, a court must scrupulously honor the bargain implicit in such agreements and interfere only when an award is severely problematic. See, e.g., Shearson/American Exp., Inc. v. McMahon, 482 U.S. 220, 223, 107 S.Ct. 2332, 96 L.Ed.2d 185 (1987). This appeal asks us to determine whether or not an arbitration award should be upheld where an arbitrator inexplicably cites language in his decision that cannot be found in the relevant collective bargaining agreement. Because we conclude that such a mistake, while glaring, does not fatally taint the balance of the arbitrator's decision in this case, we affirm the decision of the District Court upholding the award.	Federal Arbitration Act (FAA) codifies Congress' desire to uphold private arbitration agreements that produce prompt and fair dispute resolution without involving the courts; in furtherance of this interest, court must scrupulously honor bargain implicit in arbitration agreements and interfere only when award is severely problematic. 9 U.S.C.A. § 1 et seq.	When will courts interfere with arbitration agreements?	002160.docx	LEGALASE-00119120-LEGALASE-00119121	Condensed, SA	0.59	839	15,344	14,873	21,876	9,079	
2000	Con v. Ford Leasing Dev. Co., 170 Ga. App. 81	23+1-085(2)	The subject clause in this case is permissive only; it is merely "descriptive of what was rented, not a covenant on the part of the tenant" to conduct a certain business. Lawrence v. White, 331 Ga. 840, 849, 635 E. 631. The general rule is that "[w]hile a recital in a lease of the purposes for which the demised premises are let has been held to constitute an express or an implied covenant on the part of the tenant to use them for no other purpose, ordinarily, in the absence of an exclusion of other purposes, a lease for a specific purpose is generally regarded as 'permissive' instead of 'restrictive,' and does not limit the use of the premises by the lessee to such purposes.... In order to establish a restriction, express language or language from which a restriction is clearly implied must be shown, so that a restriction on use of premises was consideration or inducement to that, in the absence of proof of an independent agreement to the effect that a restriction on the use of the premises was the consideration or inducement to the execution of the lease..., the tenant has the right to use the premises for any lawful purpose for which they are adapted." (Emphasis supplied.) 517 C.J.S. Landlord and Tenant, § 376; pp. 867-861.	Should express language from which a restriction can be implied be shown to establish restriction in a lease?		001951.docx	LEGALASE-00119694-LEGALASE-00119696	Condensed, SA, Sub 0.36	0	1	1	1	1	1	
2001	Int'l Bhd. of Teamsters v. America, 191, 304 F. Supp. 2d 1278	23+1+1524	Significantly, the RLA provides: "Exclusive jurisdiction is hereby adjudicated to the National Labor Relations Board for the resolution of all disputes involving the carrier's internal dispute-resolution processes and mechanisms, including the carrier's internal dispute-resolution processes and an adjustment board established by the employer and the unions," and federal courts lack subject matter jurisdiction over such disputes. See Ledford 203 (1994). Accordingly, federal courts in general have declined to regulate the manner and timing of arbitration once they have been asked to do so. See, e.g., American Airlines, Inc. v. American Airlines, Inc., 288 F.2d 957, 968 (7th Cir. 1958); Air Line Pilots Ass'n, Int'l v. Champion Air, Inc., No. 0672467 (MD/SHN), 2007 WL 1229385, at *4, 2007 U.S. Dist. LEXIS 31067, at *11 (D.Minn. Apr. 27, 2007); Profit Flight Attendants Ass'n v. Nw. Airlines Corp., No. 05-1446 (SD/SHN), 2005 WL 1869123, at *3 n. 2, 2005 U.S. Dist. LEXIS 45785, at *7 n. 2 (D.Minn. Aug. 5, 2005). For instance, the District of Minnesota in Champion Air declined to grant a union's request for an injunction requiring an airline to select claimant for a System Board and to schedule a hearing once it had determined that the underlying grievances were subject to arbitration. See Champion Air, Inc., 2007 WL 1229385, at *4, 2007 U.S. Dist. LEXIS 31067, at *11. The court noted the precedent establishing that courts "do not have jurisdiction to order expedited arbitration because, if the underlying dispute is minor and subject to mandatory arbitration, the courts lack jurisdiction to take any further action." Id. at *4, 2007 U.S. Dist. LEXIS 31067, at *10. For this reason, the court concluded that it did not have the authority to regulate the manner in which the parties carried out the arbitration procedures under their collective bargaining agreement. See Id. at *3 n. 2, 2007 U.S. Dist. LEXIS 31067, at *10.	If the grievances under the Railway Labor Act (RLA) mandatory arbitral mechanism are minor disputes, should those be resolved only through the RLA mechanisms?		003284.docx	LEGALASE-00119593-LEGALASE-00119594	SA, Sub	0.84	0	0	1	1	1	1
2002	In re PHN, 540 B.R. 1	36+1	Under Massachusetts law courts look to the following factors to determine whether equitable subrogation applies: (1) the subrogee made the payment to protect his or her own interest; (2) the subrogee did not act as a volunteer; (3) the subrogee was not primarily liable for the debt paid; (4) the subrogee paid off the entire encumbrance; and (5) the subrogee's payment would not work any injustice to the rights of the junior lienholder. East Boston Sav. Bank v. Ogan, 428 Mass. 327, 330, 701 N.E.2d 331 (1998). Not all factors need be present for equitable subrogation to apply.	What are the factors that determine equitable subrogation?		Subrogation - Memo 33-003311621-ROSS-003311622 VP.docx	ROSS-003311621-ROSS-003311622	Condensed, SA, Sub 0.1	0	0	1	1	1	1	1
2003	Flying Tiger Line v. Boyd, 244 F. Supp. 889	15+1101	The final contention advanced in behalf of the plaintiff is that the record of the hearings before the Board does not sustain the validity of the regulation or the need therefor. This contention seems to be based on a misconception of the nature of a rule-making proceeding. Rule-making is a legislative process. It is neither judicial, administrative, nor quasi-judicial. An agency performing a legislative function need not proceed on evidence formally presented at hearings. It may act on the basis of data contained in its own files, on information informally gained by members of the body, on its own expertise, or on its own views or opinions. It is not necessary for the regulatory agency to cause to be submitted at hearings evidence that would support its rule-making decisions. The regulation ultimately promulgated need not be sustained by evidence. The purposes of rule-making hearings are to give an opportunity to interested parties to submit data and facts, and to present their views. Consequently, the Court does not review a record of such hearing as it does records in judicial or quasi-judicial proceedings. Such hearings are analogous to Congressional Hearings conducted by Congressional Committees. An act of Congress need not be supported by formal evidence introduced at hearings.	Does an agency performing legislative functions always have to proceed on evidence formally presented at hearings?		Administrative Law - Memo 883 - RK.docx	ROSS-00330869-ROSS-00330869	Condensed, SA	0.8	0	1	0	1	1	1

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	People v. Chicago, M. & St. P. Ry. Co., 206 Ill. 486	92+3044	It is claimed by the people that the provision in question is sustainable under what is known as the police power of the state, commonly defined as that inherent plenary power in the state to prohibit all things hurtful to the comfort, welfare, and safety of society. The relation of employer and employee is purely voluntary, resting upon the contract of the parties. Every man has a natural right to hire his services to any one he pleases, or refrain from such hiring, and it is equally the right of every one to determine whose services he will hire. The state has no right to interfere in a private employment and stipulate the terms of the services to be rendered. <i>Triedman on Limitation of Police Power</i> , "" 176, 178. It is true that the state does have the right, under its police powers, to pass laws that tend to promote the health, safety, or morals of such employees as Turner, because of the fact that such laws would tend to promote the health, comfort, safety, and welfare of society. The act in question, as contended by plaintiff in error, does not in any way so far as we are able to see, tend to promote the health, safety, or morals of such employees. The provisions in question are not adapted to the object for which the law was enacted, and cannot be said to secure public comfort, welfare, or safety, or public morals. There is no contention, and there can be none made with any reasonable showing, that the provision in question tends to promote the safety or health of any employee. It has always been the policy of our laws to condemn the idea of any voter being paid for exercising the privilege of an elector or voter. The right to vote is simply one of the privileges guaranteed to every citizen of this country who possesses the requisite qualifications. It is not only a right, but should be regarded as a duty of the citizen where he is reasonably able physically to perform that duty. It is not the constitutional right of any citizen to be paid for the exercise of his right to vote, and the holding of the provision in question is not unconstitutional on that account.	No exercise of the police power can disregard the constitutional guarantees in respect to the taking of private property, due process, and equal protection of the laws, or override the demands of natural justice.	"Can an exercise of the police power disregard the constitutional guarantees in respect to the taking of private property, due process, and equal protection?"	002721.docx	LEGALASE-00120208-LEGALASE-00120210	Condensed, SA	0.92	8390	1	15,3440	14,8730	21,8761	9,029
2004															
	Watson v. United States, 865 F.3d 123	269+27	As the New York Court of Appeals has recently reaffirmed, the tort of malicious prosecution requires proof of both malice and a lack of probable cause, which are "independent and indispensable elements." <i>Torres v. Jones</i> , 26 N.Y.2d 742, 761, 47 N.E.3d 747 (2016) (quoting <i>Martin v. City of Albany</i> , 42 N.Y.2d 33, 17, 396 N.Y.S.2d 632, 364 N.E.2d 1304 (1977)). To prove malice, a plaintiff must show that the defendant acted in bad faith, i.e., on the basis of "a wrong or improper motive, something other than a desire to see the ends of justice served." (Id. (quoting <i>Nardelli v. Stambler</i> , 44 N.Y.2d 500, 503, 406 N.Y.S.2d 443, 377 N.E.2d 975 (1978)). After a bench trial on liability with respect to the claims that survived dismissal, the district court found that Watson's "harm was caused by a series of negligent acts by government officials," and that "[t]here is no evidence of malice or intent to harm plaintiff." App'x at 1226. Because Watson cannot demonstrate malice under New York law, his malicious prosecution claim fails.	Under New York law, to prove malice, plaintiff asserting malicious prosecution claim must show that defendant acted in bad faith, i.e., on basis of wrong or improper motive, something other than desire to see ends of justice served.	What must a plaintiff must show to prove malice in a malicious prosecution claim?	002753.docx	LEGALASE-00120246-LEGALASE-00120247	Condensed, SA, Sub 0.78	0.78	0	1	1	1	1	
2005															
	Hicks v. City of New York, 232 F. Supp. 34480	269+2471	"[T]he existence of probable cause constitutes a complete defense to a claim of malicious prosecution in New York." <i>Savino v. City of New York</i> , 331 F.3d 63, 72 (2d Cir. 2003). A grand jury indictment "creates a presumption of probable cause that can only be overcome by evidence that the indictment was the product of fraud, perjury, the suppression of evidence by the police, or other police conduct undertaken in bad faith." <i>Savino</i> , 331 F.3d at 73 (internal quotations and citations omitted). Bad faith may be shown "through evidence that police witnesses have not made a complete and full statement of facts." <i>Newton v. City of New York</i> , 640 F.Supp.2d 426, 442 (S.D.N.Y. 2009) (internal quotations and citations omitted), or that police "balled" to pursue obvious indications of innocence." <i>Newton v. City of New York</i> , 566 F.Supp.2d 256, 277 (S.D.N.Y. 2008) (denying plaintiff's allegation that prosecutors coerced witnesses who failed to identify plaintiff at grand jury hearing to testify against him). Plaintiff's evidence in this case is insufficient to establish that the police acted in bad faith. Plaintiff's evidence at trial, "yet was able to identify him with little difficulty days later at trial," sufficient to "raise the specter of bad faith" and rebut presumption). But "police officers act in bad faith only when they fail to disclose evidence that would conclusively establish the plaintiff's innocence or negate the possibility that plaintiff had committed the crime." <i>Stokes</i> , 2015 WL 1246542, at *5 (internal quotations and citations omitted).	In context of malicious prosecution claim, under New York law, grand jury indictment creates a presumption of probable cause that can only be overcome by evidence that the indictment was the product of fraud, perjury, the suppression of evidence by the police, or other police conduct undertaken in bad faith.	How can the presumption of probable cause created by the grand jury indictment be rebutted in a malicious prosecution case?	002941.docx	LEGALASE-00119866-LEGALASE-00119867	Condensed, SA, Sub 0.8	0.8	0	1	1	1	1	1
2006															
	Rural/Metro Corp. v. Arizona Corp. Comm'n, 129 Ariz. 116	317+1102	Article 13, § 6 of the Arizona Constitution does not allow the legislature to give "public service corporation" designation to corporations not listed in Article 13, § 2. Accordingly, A.R.S. § 40-281 is unconstitutional insofar as it attempts to expand the Commission's jurisdiction to regulate businesses as public service corporations although not defined as such under Article 13, § 2. The Commission's jurisdiction to regulate businesses as public service corporations is unconstitutional insofar as it attempts to expand the Commission's jurisdiction to regulate businesses as public service corporations although not defined as such under the Constitution. A.R.S. § 40-281, A.R.S. Const. Art. 13, § 2, 6.	Article of the Constitution providing that the law-making power may engage the powers and extend the duties of the Corporation Commission does not allow the legislature to give "public service corporation" designation to corporations not listed in the article of the Constitution defining that term, and thus statute requiring certificate of public convenience and necessity before construction by public service corporation is unconstitutional insofar as it attempts to expand the Commission's jurisdiction to regulate businesses as public service corporations although not defined as such under the Constitution. A.R.S. § 40-281, A.R.S. Const. Art. 13, § 2, 6.	Can the legislature expand the Commission's jurisdiction by giving public service designation to businesses falling outside the scope of the constitutional definition?	003523.docx	LEGALASE-00120895-LEGALASE-00120896	Condensed, SA, Sub 0.42	0.42	0	1	1	1	1	1
2007															

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2013	White v. Schindle, 92 P.3d 372	366-1	White v. Schindle, 92 P.3d 372.	Under Louisiana law, "conventional subrogation" occurs when obligee receives performance from third person in respect terms of the obligation that it primarily payable from the funds of another. Right to subrogation "takes place by operation of law in favor of obligor who pays debt he owes with others and who has recourse against those others as result of the payment. LSA-C.C. arts. 1825, 1827, 1829.	Can subrogation be conventional or legal?	043648.docx	LEGALASE-002121682-LEGALASE-002121683	SA, Sub	0.92	889	15,344	14,873	21,876	9,079
2014	Koffman v. Lechtus, 2013 WL 111,33, 246 Wis. 2d 31	366-1	The interaction of the collateral source rule with the third legal principle implicated today, subrogation, has engendered the confusion that has been the subject of this opinion. The rule, which requires that the means of recovery be placed in the hands of the party who has the right to recover, on behalf of another subrogated party, obtains a right of recovery in an action against a third-party tortfeasor and is a necessary party in an action against such a tortfeasor. Bescon Bowl, Inc. v. Wisconsin Elec. Power Co., 176 Wis.2d 740, 775, 501 N.W.2d 788 (1993); Petrucci v. Gerhardt, 206 Wis. 358, 362, 240 N.W. 385 (1932). Subrogation exists to ensure that the loss is ultimately placed upon the wrongdoer and to prevent the subrogator from being unjustly enriched through a double recovery, i.e., a recovery from the subrogated party and the loss of the subrogator. See, e.g., Metropolitan Life Ins. Co., 121 Wis.2d 437, 444, 360 N.W.2d 311 (1985).	Subrogation exists to ensure that the loss is ultimately placed upon the wrongdoer and to prevent the subrogator from being unjustly enriched through a double recovery, i.e., a recovery from the subrogated party and the loss of the subrogator.	Does subrogation exist to ensure that the loss is ultimately placed upon the wrongdoer and to prevent the subrogator from being unjustly enriched through a double recovery?	043856.docx	LEGALASE-002121406-LEGALASE-002121407	Condensed, SA	0.73	0	1	0	1	
2015	Employers Inc. of Waukau v. Com. Dep't of Transp., 581 Pa. 381	366-1	The doctrine of equitable subrogation is "a means of placing the ultimate burden of a debt upon the one who in good conscience ought to pay it, and is generally applicable when one pays out of his own funds a debt or obligation that is primarily payable from the funds of another." 642 (1993). The Board of Claims exercises jurisdiction in both law and equity, and the Board's equity jurisdiction extends to all cases instituted in the form of contract actions; specifically, quasi-contract claims and claims in quantum meruit. See Dept. of Environmental Resources v. Winn, 142 Pa. Cmwh. 375, 597 A.2d 81 (1991).	Doctrine of "equitable subrogation" is a means of placing the ultimate burden of a debt upon the one who in good conscience ought to pay it and is generally applicable when one pays out of his own funds a debt or obligation that is primarily payable from the funds of another.	"Does the equitable subrogation doctrine place the ultimate burden for discharging a debt or liability on the person or entity who, in good conscience, ought to pay?"	043947.docx	LEGALASE-002121514-LEGALASE-002121515	Condensed, SA	0.6	0	1	0	1	
2016	Brink v. Switch, 576 A.2d 1329	366-7(1)	For purposes of the Court's decision upon this matter, it is deemed, the corporation of this subrogation is that which rests the accommodation party's right of recourse on the instrument against the party accommodated. An accommodation party is one who signs an instrument in any capacity for the purpose of lending his name to another party to it, 6 Del.C., " 3-415(1). The party accommodated is the one to whom the credit of the accommodation party is loaned. R. Anderson, Uniform Commercial Code, " 3-415(3) (d)ing Brown County Cooperative Assoc. v. Reamsen-Ing. Cattle Co., (1980, S.D. 1300 N.W.2d 265. The fact that the accommodation party is not a party to the instrument does not mean that it is not accommodated is consistent with the fact that an accommodation party has the status of a surety with respect to the accommodated party. See Anderson, " 3-415.24. When a surety discharges an obligation of this principal, the surety becomes entitled by right of subrogation, to whatever security the creditor has for enforcement of his claim against the principal or to all the rights... means or remedies which the creditor has for enforcing payment against the principal. 11 Am.Jur.2d, " 111, and the surety is subrogated to the rights of the creditor to the extent of the direct one for the performance of his own act, but either accession or collateral to the obligation contracted by the principal. 74 Am.Jur., Suretyship, " 1.	Surety which discharges obligation of principal becomes entitled to right of subrogation, to whatever security the creditor has for enforcement of claim against principal, and to all rights, means, or remedies which creditor had for enforcing payment.	"Does a surety who discharges an obligation of the principal security the creditor has for enforcement of the claim against principal, and to all rights, means, or remedies which the creditor had for enforcing payment?"	044010.docx	LEGALASE-002121429-LEGALASE-002121430	Condensed, SA	0.83	0	1	0	1	
2017	Norcon Builders v. GMP Homes Vc., 161 Wash. App. 474	366-1	Prestanor, 160 Wash.2d at 564-65, 160 P.3d 17. "As an equitable remedy, subrogation is designed to avoid one person receiving an unearned benefit at the expense of another, i.e., the intervening lender through an unearned benefit at the expense of another, i.e., the new mortgagee who paid the prior debt." Bank of America, 136 Wash.App. at 714, 109 P.3d 863. In Prestanor, our Supreme Court adopted the definition of equitable subrogation from Restatement (Third) of Property: Mortgages, " 7.6 (1997). That section provides, (a) One who fully performs an obligation of another, secured by a mortgage, becomes by subrogation the owner of the obligation and the mortgage to the extent necessary to prevent unjust enrichment of the mortgagor. (b) The mortgagee who discharges the obligation and the mortgage, they are preserved and the mortgage retains its priority in the hands of the subrogee.	As an equitable remedy, subrogation is designed to avoid one person receiving an unearned benefit, i.e., the intervening lender through an unearned benefit at the expense of another, i.e., the mortgagee who paid the prior debt. Restatement (Third) of Property (Mortgages) § 7.6.	Is equitable subrogation or subrogation designed to avoid a person receiving an unearned benefit at the expense of another?	044052.docx	LEGALASE-002121471-LEGALASE-002121472	Condensed, SA	0.67	0	1	0	1	
2018	Flier v. Shapiro, 833 F.2d 139	309-179	The existence of the principal's duty to pay gives a surety the equitable right to call upon the principal to exonerate him from liability by discharging the debt when it becomes due. Chicago Title & Trust Co. v. American Central Ind. & Marine Ins. Co., 198 U.S. 159, 164 (1905). See also, Restatement (Second) of Property, § 54.02(1), cmt. d, and Restatement of Security, § 112:17 N.Y. Jur. Suretyship and Guaranty § 307 (1967). Alternatively, the existence of this duty gives the surety, who is required to pay, the right to be subrogated to the creditor's claims against the principal. Gensel Corp. v. Equitable Trust Co., 24 N.Y. 488, 425-26, 150 N.E. 501 (1926); National Surety Co. v. National City Bank, 184 App.Div. 771, 773-74, 122 N.Y.S. 413 (1918); Restatement of Security § 430.	Under New York law, existence of principal's duty to pay gives surety equitable right to call upon principal to exonerate him from liability by discharging debt when it becomes due; alternatively, existence of such duty gives surety, who was required to pay, right to be subrogated to creditor's claims against principal.	Does the existence of a principal's duty to pay give a surety an equitable right to call upon principal to exonerate him from liability by discharging debt when it becomes due?	Subrogation - Memo F 710 - C - SA.docx	ROSS-00311358-ROSS-00311359	Condensed, SA, Sub	0	1	1	1	1	1

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2019	Frymire Eng'g Co., ex rel. Liberty Nat'l Bank v. S.W. 3d 713	366+1	The doctrine of equitable subrogation allows one who involuntarily pays another's debt to seek repayment of that debt by the person who in fact is responsible for the debt. 1603 W.2d 695, 700 (Tex. App. Dallas 2005, no pet.). Equitable subrogation prevents the unjust enrichment of the debtor. First Nat. Bank of Kentucky v. O'Dell, 856 S.W.2d 410, 415 (Tex.1993). Establishing an equitable subrogation claim requires the claimant to prove both that the benefited party was primarily liable on the debt and that the debt was paid involuntarily. Melicorne "Bennett" Plumbing, Inc. v. Villa Franco, Inc., 513 S.W.2d 32, 36 (Tex. Civ. App. Dallas 1974, writ ref'd n.r.). Argonaut Ins. Co. v. Co., 803 S.W.2d 371, 341 (Tex.App. Corpus Christi 1993, writ denied).	The "equitable subrogation doctrine" allows one who involuntarily pays another's debt to seek repayment of that debt by the person who in fact is responsible for the debt. 1603 W.2d 695, 700 (Tex. App. Dallas 2005, no pet.). Equitable subrogation prevents the unjust enrichment of the debtor. First Nat. Bank of Kentucky v. O'Dell, 856 S.W.2d 410, 415 (Tex.1993). Establishing an equitable subrogation claim requires the claimant to prove both that the benefited party was primarily liable on the debt and that the debt was paid involuntarily. Melicorne "Bennett" Plumbing, Inc. v. Villa Franco, Inc., 513 S.W.2d 32, 36 (Tex. Civ. App. Dallas 1974, writ ref'd n.r.). Argonaut Ins. Co. v. Co., 803 S.W.2d 371, 341 (Tex.App. Corpus Christi 1993, writ denied).	Does the equitable subrogation doctrine allow one who involuntarily pays another's debt to seek repayment of that debt by the person who in fact is responsible for the debt? 1603 W.2d 695, 700 (Tex. App. Dallas 2005, no pet.). Equitable subrogation prevents the unjust enrichment of the debtor. First Nat. Bank of Kentucky v. O'Dell, 856 S.W.2d 410, 415 (Tex.1993). Establishing an equitable subrogation claim requires the claimant to prove both that the benefited party was primarily liable on the debt and that the debt was paid involuntarily. Melicorne "Bennett" Plumbing, Inc. v. Villa Franco, Inc., 513 S.W.2d 32, 36 (Tex. Civ. App. Dallas 1974, writ ref'd n.r.). Argonaut Ins. Co. v. Co., 803 S.W.2d 371, 341 (Tex.App. Corpus Christi 1993, writ denied).	041155.docx LEGALISE-00121557- LEGALISE-00121558	15,344	1	0	839	0	1	1	21,876	9,029
2020	Hunt v. Mobil Oil Corp., 410 F. Supp. 10	257+1-51	It is long cardinal doctrine that the public interest in the enforcement of the antitrust laws makes antitrust claims inappropriate subjects for arbitration; stay of antitrust judicial proceedings in favor of arbitration will not be granted where the arbitrators would be required to consider antitrust issues with respect to the controversy to be determined by them. Sherman Anti-Trust Act, § 1, 23 U.S.C.A. § 1.	Public interest in the enforcement of the antitrust laws makes antitrust claims inappropriate subjects for arbitrations; stay of antitrust judicial proceedings in favor of arbitration will not be granted where the arbitrators would be required to consider antitrust issues with respect to the controversy to be determined by them. Sherman Anti-Trust Act, § 1, 23 U.S.C.A. § 1.	Does public interest in the enforcement of antitrust laws make antitrust claims inappropriate subjects for arbitration? RK.docx	R055-00297120-R055- 003397121	1	0	0	1	1	1	1	1	
2021	Dillon v. BMO Harris Bank N.A., 856 F.3d 330	257+1-21	Consistent with these contract principles, the Supreme Court has recognized that arbitration agreements that operate "as a prospective waiver" of a party's right to pursue statutory remedies are not enforceable under the federal Arbitration Act. 13 S.Ct. 1181, 1185 (2019). This prospective waiver doctrine courts will not enforce an arbitration agreement if doing so would prevent a litigant from vindicating federal substantive statutory rights. 9 U.S.C.A. § 1, et seq.	Arbitration agreements that operate as a prospective waiver of a party's right to pursue statutory remedies are not enforceable under the federal Arbitration Act. 13 S.Ct. 1181, 1185 (2019). This prospective waiver doctrine courts will not enforce an arbitration agreement if doing so would prevent a litigant from vindicating federal substantive statutory rights. 9 U.S.C.A. § 1, et seq.	Is an arbitration agreement that operates as a waiver of a party's right to pursue statutory remedies enforceable? Re.docx	LEGALISE-00011707- LEGALISE-00011708	1	0	1	1	1	1	1	1	
2022	Cahill v. San Diego Gas & Elec. Co., 194 Cal. App. 4th 939	30+10	In their motion to dismiss the instant appeal, Owners note the apparent split of authority regarding whether a section 877.6(e) writ petition is the appropriate means of challenging a good faith determination made by a good faith and disinterested arbitrator. Owners argue that the court should dismiss a cross-complaint filed by a nonsettling defendant. Noting this court has not yet addressed this issue, Owners ask us to follow the holdings in Main Fiber and O'Hearn and dismiss SDBE's appeal challenging the trial court's good faith settlement determination. However, we decline to do so. Based on our review of section 877.6(e)'s language and legislative history, and Main Fiber, O'Hearn, Maryland Casualty, and Williams, we conclude a writ petition that "may" be filed by a nonsettling defendant to challenge a good faith settlement determination, and the availability of writ review, or the summary denial of a writ petition, does not preclude an appeal after a final judgment. Maryland Casualty's detailed analysis of the legislative history of section 877.6(e), as discussed above, persuades us the Legislature did not intend that statute to preclude postjudgment appeals of good faith settlement determinations where earlier writ petitions were summarily denied. We are persuaded by, and adopt the reasoning in, Main Fiber and O'Hearn. In any event, we conclude Main Fiber and O'Hearn are procedurally inappropriate to this case because the nonsettling defendants in those cases appealed without first filing a writ petition pursuant to section 877.6(e). Accordingly, we deny Owners' motion to dismiss SDBE's appeal of the trial court's order that determined their settlement with Cahill was made in good faith and dismissed its cross-complaint against them.	Is a writ petition filed pursuant to section 877.6(e), a permissive means to challenge a trial court's good faith settlement determination?	008155.docx LEGALISE-00121902- LEGALISE-00121903	1	0	1	1	1	1	1	1	1	
2023	Consumer Union of U.S. v. State, 5 N.Y.3d 327	148+2-107	In Matter of Smith v. Town of Mendon, 4 N.Y.3d 10, 789 N.Y.S.2d 696, 822 N.E.2d 324 (2004), we held that "elections are defined as business decisions conditioning approval of development on the dedication of property to public use" (citations and internal quotation marks omitted). A condition placed on land use is an exaction, and therefore an unconstitutional taking, if the condition lacks an "essential nexus" with the state interest for which it is imposed (see Nolan v. California Coastal Comm'n, 54 Cal.4th 865, 885 (2012) (Nolan), 39 Cal.4th 931 (2007) (Nolan)). "To qualify for exaction," [T]he condition imposed on the development [see Dolan v. City of Tigard, 532 U.S. 374, 391, 314 S.Ct. 2109, 129 L.Ed.2d 304 (1994)].	Condition placed on land use is an "exaction," and therefore an unconstitutional taking, if the condition lacks an essential nexus with the state interest for which it is imposed, and is not rationally proportional to the impact of the proposed development. U.S.C.A. Const.Amend. 5; McKinney's Const. Art.1, § 7.	Is a condition placed on land use an exaction, and therefore an unconstitutional taking, if the condition lacks an essential nexus with the state interest for which it is imposed?	041442.docx LEGALISE-00122062- LEGALISE-00122063	1	0	1	1	1	1	1	1	

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2028	In re Fresh & Process Potatoes Antitrust Litig., 834 F. Supp. 2d 1141.	221+142	Plaintiffs raise a concern about whether UPGC can assume the status of the member agencies in this case. But that makes no difference. The first element of the Act of State Doctrine is whether there is an official act of a foreign sovereign performed within its own territory, not whether the named defendant is the foreign sovereign who performed that official act. It makes no difference that the member agencies are not the named defendants in this case. The Act of State Doctrine prevents Plaintiffs from attacking the member agencies' sovereign supply-control decisions through UPGC. Unlike the FSIA, the relevant acts include any governmental acts whose validity would be called into question by adjudication of the suit, not just the acts of the defendants. Spectrum Stores, 692 F.3d 495-496; see also IAM v. OPEC, 693 F.2d 1354, 1359 (9th Cir.1982). Moreover, "[t]he Act of State Doctrine is not diluted by the fact that the defendant is not a sovereign state, but a foreign government, or that the act is not a sovereign act, but an act of a foreign government." IAM, 649 F.2d at 1360; see also Honduras Aircraft Registry, Ltd. v. Honduras, 129 F.3d 45-60, 550 (11th Cir.1997) ("[T]here is no commercial exception to the Act of State Doctrine as there is under the FSIA...").	Unlike Foreign Sovereign Immunities Act (FSIA), relevant acts for act of state doctrine include any governmental acts whose validity would be called into question by adjudication of suit, not just acts of defendants. 28 U.S.C.A. § 1604.	"Unlike the Foreign Sovereign Immunities Act (FSIA), do relevant acts for act of state doctrine include any governmental acts whose validity would be called into question by adjudication of the suit?"	019717.docx	LEGALASE-00123776-LEGALASE-00123780	Condensed_SA_Sub_0.8	0	1	1	14,873	21,876	9,029
														1
2029	United States v. One Gulfstream G.V., et al., 941 F. Supp. 2d 1141.	221+142	The act of state doctrine precludes domestic courts from inquiring into the validity of the public acts that a recognized foreign sovereign power committed within its own territory. <i>McKesson Corp. v. Islamic Republic of Iran</i> , 539 F.3d 485, 491 (D.C. Cir. 2008); see <i>Underhill v. Hernandez</i> , 168 U.S. 250, 252, 18 S.Ct. 83, 42 L.Ed. 466 (1897) ("Every sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the courts of another country. Whether they be acts of war or acts of mere domestic policy or of internal administration, it is not for the courts of one country to sit in judgment on the acts of the courts of another. (Third of the Foreign Relations Law of the United States, 443 (1987)). The doctrine applies when the relief sought or the defense interposed would require a court in the United States to declare invalid the official act of a foreign sovereign performed within its boundaries. <i>W.S. Kirkpatrick & Co. v. Environmental Tectonics Corp.</i> , 493 U.S. 400, 405, 110 S.Ct. 701, 107 L.Ed.2d 816 (1990). The policies underlying the doctrine include international comity, respect for the sovereignty of foreign nations on their own territory, and the avoidance of embarrassment to the Executive Branch in the conduct of foreign relations. <i>World Wide Webb, Ltd. v. Republic of Kazakhstan</i> , 286 F.3d 1154, 1165 (D.C. Cir. 2002).	The policies underlying the "act of state doctrine" precluding domestic courts from inquiring into the validity of the public acts that a recognized foreign sovereign power committed within its own territory include international comity, respect for the sovereignty of foreign nations on their own territory, and the avoidance of embarrassment to the Executive Branch in its conduct of foreign relations.	Does the act of state doctrine preclude domestic courts from inquiring into the validity of the public acts of the public acts that a recognized foreign sovereign power committed within its own territory?	019725.docx	LEGALASE-00123790-LEGALASE-00123791	Condensed_SA_Sub_0.68	0	1	1	1	1	1
	Sarei v. Rio Tinto P.L.C., 221 F. Supp. 2d 1116.	221+142	The act of state doctrine prevents U.S. courts from inquiring into the validity of the public acts of a recognized sovereign power committed within its own territory. See <i>Banco Nacional de Cuba v. Sabbatino</i> , 376 U.S. 398, 401, 84 S.Ct. 923, 11 L.Ed.2d 804 (1964); <i>Imperial Lumber Co. v. Republic of Turkey</i> , 354 U.S. 296, 301, 17 S.Ct. 539, 1 L.Ed.2d 861 (1957) (history of doctrine). The doctrine reflects the concern that the judiciary, by questioning the validity of sovereign acts taken by foreign states, may interfere with the executive's conduct of American foreign policy. <i>W.S. Kirkpatrick & Co. v. Environmental Tectonics Corp.</i> , 493 U.S. 400, 404, 110 S.Ct. 701, 107 L.Ed.2d 816 (1990). As a result, an action may be barred if (1) there is an "official act of a foreign sovereign performed within its own territory"; and (2) "the relief sought or the defense interposed in the action would require a court in the United States to declare invalid the [foreign sovereign's] official act." <i>Id.</i> at 405, 110 S.Ct. 701; see also <i>Credit Suisse v. United States Dist. Court for Cent. Dist. of Cal.</i> , 130 F.3d 1342, 1346 (9th Cir. 1997).	An action may be barred under the act of state doctrine if (1) there is an official act of a foreign sovereign performed within its own territory, and (2) the relief sought or the defense interposed in the action would require a court in the United States to declare invalid the foreign sovereign's official act.	Can an action be barred under the act of state doctrine if there is an official act of a foreign sovereign performed within its own territory?	International Law - Memo # 121 - C - SA.docx	ROSS-003285168-ROSS-003285169	0.73	0	1	0	1	1	
2030	Pac. Merch. Shipping Ass'n v. Aubrey, 769 F. Supp. 1310.	405+1536	For territorial purposes, "navigable waters" are divided into three zones. The zone inland from a nation's shores is referred to as the inland or territorial sea. The zone extending from the nation's coast to the complete sovereignty of the coastal nation is the territorial sea. The zone measured seaward from the nation's coast is comprised of a three-mile belt known as the marginal or territorial sea. A coastal nation may exercise extensive control over the territorial zone, but cannot deny the right of innocent passage to foreign nations. The third zone lies beyond the territorial sea and is referred to as the "high seas." This zone consists of international waters that are not subject to the dominion of any nation. See <i>United States v. Alaska</i> , 422 U.S. 184, 196(97); 95 S.Ct. 2240, 2249-50, 45 L.Ed.2d 109 (1975).	Coastal nation may exercise extensive control over "marginal or territorial sea," within three miles of nation's coast, but cannot deny right of innocent passage to foreign nations.	"Can a coastal nation exercise extensive control over marginal or territorial sea, within three miles of the nation's coast, and deny the right of innocent passage to foreign nations?"	International Law - Memo # 136 - C - PM.docx	ROSS-003282687-ROSS-003282688	Condensed_SA_Sub_0.78	0	1	1	1	1	1
2032	United States v. Sum of 570,950,605, 334 F. Supp. 3d 212.	221+142	To accept the Shadian Claimants' invitation to construe the act of state doctrine to apply here would drastically expand the scope of the rule; it would apply in virtually any case in which a foreign government issues a formal decree or decision that declares that a position taken by a litigant in a court in the United States is contrary to an international agreement or the laws of the foreign state. Such a rule would not only break with centuries of practice and precedent, but would undermine the core tenant of the act of state doctrine that courts should respect "the proper distribution of functions between the judicial and political branches of the Government on matters bearing upon foreign affairs." <i>Sabbatino</i> , 376 U.S. at 427-28, 34 S.Ct. 923. The fact that a case might frustrate the expectations or views of a foreign state, moreover, is no reason for a court to disregard the principle that "[c]ourts in the United States have no power, and ordinarily the obligation, to decide cases and controversies properly presented to them." <i>Kirkpatrick</i> , 493 U.S. at 1409, 110 S.Ct. 701. "The act of state doctrine does not establish an exception for cases or controversies that may embarrass foreign governments, but merely requires that, in the process of deciding, the acts of foreign sovereigns taken within their own jurisdiction shall be deemed valid." <i>Id.</i> (emphasis added).	The act of state doctrine does not establish an exception for cases or controversies that may embarrass foreign governments, but merely requires that, in the process of deciding, the acts of foreign sovereigns taken within their own jurisdiction shall be deemed valid.	"Is the "Act of state doctrine" an exception for cases and controversies that may embarrass foreign governments?"	International Law - Memo # 206 - C - ML.docx	ROSS-00334026E-ROSS-00334028	Condensed_SA	0.81	0	1	0	1	

ROW	Judicial Opinion	WIMS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
	In re Adoption of Dow, 38 A.D.3d 186	221+342	The act of state doctrine requires an American court to refrain from examining the validity of an act of a foreign state by which that state has exercised its jurisdiction to give effect to its public concerns. See Restatement (T) of Foreign Relations Law § 411. The act of state doctrine is not a rule of international law but one of conflict of laws. Restatement's Note 1 ("The act of state doctrine is limited to acts of general application decided by the executive or legislative branches"). Since an adoption can be characterized as an administrative act which essentially involves a matter of private interests, we are reluctant to extend the act of state doctrine to foreign adoptions. See McMillan, International Adoption: A Step Towards a Uniform Process, Pace International L. Rev. 137, 154 (1995) (commenting on how the act of state doctrine will seldom be applicable to adoptions).	The act of state doctrine requires an American court to refrain from examining the validity of an act of a foreign state by which that state has exercised its jurisdiction to give effect to its public concerns.	Does the act of state doctrine require an American court to refrain from examining the validity of an act of a foreign state by which that state has exercised its jurisdiction to give effect to its public concerns?	00052.docx	LEGALCASE-0012443-LEGALCASE-0012444	Condensed SA	0.75	839	15_344	14,873	21,876	9,029
2033	Sarei v. Rio Tinto PLC, 221 F.3d 1116	221+342	The act of state doctrine precludes a United States court from adjudicating claims if doing so would require the court to invalidate a foreign sovereign's official acts within its own territory. See Credit Suisse v. United States Dist. Court for the Central Dist. of Cal., 130 F.3d 1342, 1346 (9th Cir.1997) ("Every sovereign State is bound to respect the territorial sovereignty of other States. It is not for the government of one country to sit in judgment on the acts of the government of another done within its own territory. Redress of grievances by reason of such acts must be obtained through the means open to be availed of by sovereign powers as between themselves." quoting Underhill v. Hernandez, 168 U.S. 250, 252, 18 S.Ct. 83, 42 L.Ed. 456 (1897)); Liu v. Republic of China, 897 F.2d 1419, 1431-32 (9th Cir.1991) (same); Chao v. Liu, 860 F.2d 1306, 1309 (9th Cir.1988); Liu v. Rockwell Int'l Corp., 768 F.2d 1333, 1336 (9th Cir.1985).	Act of state doctrine precludes a United States court from adjudicating claims if doing so would require that the court invalidate a foreign sovereign's official acts within its own territory.	Does the Act of state doctrine preclude a United States court from adjudicating claims if doing so would require that the court invalidate a foreign sovereign's official acts within its own territory?	International Law - Memo # 314 - C- No.docx	ROSS-00303068-R055-003303070	Condensed SA	0.79	0	1	0	1	1
2034	Credit Suisse v. U.S. Dist. Court for Cent. Dist. of California, 130 F.3d 1342	221+342	Under the current view of act of state doctrine, action will be barred only if (1) there is official act of foreign sovereign performed within its own territory; and (2) the relief sought or the defense interposed in action would require a court in United States to declare invalid foreign sovereign's official act.	Under current view of act of state doctrine, action will be barred only if (1) there is official act of foreign sovereign performed within its own territory, and (2) relief sought or defense interposed in action would require court in United States to declare invalid foreign sovereign's official act.	Is a claim barred by the act of state doctrine only if it involves an official act of a foreign sovereign performed within its own territory?	International Law - Memo # 316 - C- No.docx	ROSS-003239662-R055-003296063	Condensed SA	0.14	0	1	0	1	1
2035	Flitridge v. Pesa-Kala, 630 F.2d 876	1708+2297	For example, the statute does not confer jurisdiction over an action by a Luxembourgish international investment treaty's suit for fraud, conversion and corporate waste. If v. Vensap, 539 F.2d 1001, 1005 (1975). In Ifr, Judge Friendly actually noted that the mere fact that every nation's municipal law may prohibit theft does not incorporate "the Eighth Commandment, 'Thou shalt not steal' . . . [and] the law of nations is a body of principles and standards of conduct that are derived from the law of morality and are not subject to the whims of the whims of express international accords, that a wrong generally recognized becomes an international law violation within the meaning of the statute. Other recent 1350 cases are similarly distinguishable. Ifr adopted a (E.D.Pa.1963) to the effect that "a violation of the law of nations arises only when there has been "violation by one or more individuals of those principles of international law that are common to all nations and are between an individual and a foreign state and (b) used by those states for their common good and/or in dealings inter se." Ifr, supra, 539 F.2d at 1015, quoting Lopez, supra, 225 F. Supp. at 297. We have no quarrel with this formulation so long as it be understood that the courts are not to prejudge the scope of the issues that the nations of the world may deem important to their interrelationships, and thus to their common good. As one commentator has noted, the sphere of domestic jurisdiction is not coextensive with the sphere of international law. The development of international law. Matters of domestic jurisdiction are not those which are urged dated by international law, but those which are left by international law for regulation by States. There are, therefore, no matters which are domestic by their "nature." All are susceptible of international regulation.	It is only where the nations of world have demonstrated that the wrong is of mutual, and not merely a local, concern, by means of express international accords, that a wrong generally recognized becomes an international law violation within the meaning of the Alien Tort Statute, 28 U.S.C.A. § 1350.	Does a wrong generally recognized become an international law violation within the meaning of the Alien Tort Statute (ATS)?	002038.docx	LEGALCASE-00124038-LEGALCASE-00124040	SA, Sub	0.86	0	0	1	1	1
2036	Memendez Rodriguez v. Pesa-Kala, 630 F.2d 423	221+108	In essence the Act of State doctrine holds that American courts will not look into the validity of an act of a foreign state by which that state has exercised its jurisdiction to give effect to its public concerns. See Restatement (T) of Foreign Relations Law § 411. The act of state doctrine is not a rule of international law but one of conflict of laws. Restatement's Note 1 ("The act of state doctrine is limited to acts of general application decided by the executive or legislative branches"). Since an adoption can be characterized as an administrative act which essentially involves a matter of private interests, we are reluctant to extend the act of state doctrine to foreign adoptions. See McMillan, International Adoption: A Step Towards a Uniform Process, Pace International L. Rev. 137, 154 (1995) (commenting on how the act of state doctrine will seldom be applicable to adoptions).	The "Act of State" doctrine holds that American courts will not look into the validity of an act of a foreign state by which that state has exercised its jurisdiction to give effect to its public concerns. It is a rule of international law but one of conflict of laws.	"Will the courts of the United States adjudicate upon the validity of an act of a foreign state by which that state has exercised its jurisdiction to give effect to its public concerns?"	003037.docx	LEGALCASE-00123731-LEGALCASE-00123732	Condensed SA, Sub 0.69	0	1	1	1	1	1
2037	Memendez Rodriguez v. Pesa-Kala, 630 F.2d 423	221+108	In essence the Act of State doctrine holds that American courts will not look into the validity of an act of a foreign state by which that state has exercised its jurisdiction to give effect to its public concerns. See Restatement (T) of Foreign Relations Law § 411. The act of state doctrine is not a rule of international law but one of conflict of laws. Restatement's Note 1 ("The act of state doctrine is limited to acts of general application decided by the executive or legislative branches"). Since an adoption can be characterized as an administrative act which essentially involves a matter of private interests, we are reluctant to extend the act of state doctrine to foreign adoptions. See McMillan, International Adoption: A Step Towards a Uniform Process, Pace International L. Rev. 137, 154 (1995) (commenting on how the act of state doctrine will seldom be applicable to adoptions).	The "Act of State" doctrine holds that American courts will not look into the validity of an act of a foreign state by which that state has exercised its jurisdiction to give effect to its public concerns. It is a rule of international law but one of conflict of laws.	"Will the courts of the United States adjudicate upon the validity of an act of a foreign state by which that state has exercised its jurisdiction to give effect to its public concerns?"	003037.docx	LEGALCASE-00123731-LEGALCASE-00123732	Condensed SA, Sub 0.69	0	1	1	1	1	1

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ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Between Trial and Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
2043	Swick v. Lutaud, 169 Ill. 2d 504	307A+3	A trial judge has discretion in granting a motion in limine and a reviewing court will not reverse a trial court's order allowing or excluding evidence unless that discretion was clearly abused.	Trial judge has discretion in granting motion in limine and reviewing court will not reverse trial court's order allowing or excluding evidence unless that discretion was clearly abused.	Does the trial judge have discretion in granting motion in limine and reviewing court will not reverse trial court's order allowing or excluding evidence unless that discretion was clearly abused?	03.226.docx	LEGALISE-00122821-LEGALISE-00122822	Condensed, SA	0.79	839	15,344	14,873	21,876	9,029
			review of the record indicates that the trial judge did not abuse his discretion in granting the defendants' motion in limine. The evidence which Swick wanted to admit did not directly involve Lutaud's conduct toward Swick and did not connect Lutaud to Swick in any manner. The evidence involved Lutaud's actions toward separate, unrelated individuals. Swick does not claim that Lutaud told him of this conduct or that Lutaud was involved in the crime with Swick. Swick does not claim that the evidence does not have any direct relationship to Swick, the trial judge did not abuse his discretion.											
2044	Turner v. Reril 505.W3d 742	307A+3	The case at hand is also distinguishable from cases holding error is not preserved when a party fails to make an offer of proof after an opponent's motion in limine is granted. See, e.g., Wyler Indus. Works v. City of Los Angeles, 90 S.W.2d at 493. A trial court's grant of a motion in limine simply prohibits references to specific issues without first obtaining a ruling outside the presence of the jury. Southwest Country Enters., 391 S.W.2d at 493. Here, Turner offered the affidavits and obtained a definitive ruling on his offer.	A trial court's grant of a motion in limine simply prohibits references to specific issues without first obtaining a ruling outside the presence of the jury.	Does a trial court's grant of a motion in limine prohibit references to specific issues without obtaining a ruling outside the presence of the jury?	Pretrial Procedure - Memo # 904 - C - VA.docx	R055-003281967-A055-003281968	Condensed, SA	0.74	0	1	0	1	
			Furthermore, as noted, the trial court granted both defendants' motions in limine to bar Dr. Angor from providing any opinion or assist thereafter in the trial. The trial court's grant of the motions in limine was not an abuse of discretion. The trial court's grant of the motions in limine was not an abuse of discretion. The trial court's grant of the motions in limine was not an abuse of discretion.											
2045	Wilbourn v. Cavalleres, 338 Ill. App. 3d 837	307A+3	A motion in limine is a procedural device that permits a party to identify, pre-trial, certain evidentiary issues the court may be asked to rule upon. Vulcan Materials, 2004 WL 2597852 at *. The purpose of such a motion is to prevent opposing parties from asking prejudicial questions and introducing prejudicial evidence in front of the jury without first seeking leave of court. Id.; Weidner v. Sanchez, 145 S.W.3d 353, 363 (Tex.App., Houston [14th Dist.] 2000, no pet.). Judges have the inherent power to regulate behavior in their courtrooms. Dow Chemical, 46 S.W.3d at 240. The imposition of sanctions for violation of an order in limine is left to the sound discretion of the trial court, and an appellate court will not reverse a trial court's decision on sanctions absent a clear abuse of discretion. Cre v. Cummings, 134 S.W.3d 835, 838 F.39 (Tex.2004); Vulcan Materials, 2004 WL 2597852 at *.	The purpose of a "motion in limine" is to permit a party to obtain an order before trial excluding inadmissible evidence and prohibiting interrogation of witnesses. The trial court's grant of the motions in limine was not an abuse of discretion. The trial court's grant of the motions in limine was not an abuse of discretion. The trial court's grant of the motions in limine was not an abuse of discretion.	Does a motion in limine permit a party to obtain an order before trial excluding inadmissible evidence?	Pretrial Procedure - Memo # 905 - C - VA.docx	R055-003281967-A055-003281968	Condensed, SA	0.43	0	1	0	1	
			A motion in limine is a procedural device that permits a party to identify, pre-trial, certain evidentiary issues the court may be asked to rule upon. Vulcan Materials, 2004 WL 2597852 at *. The purpose of such a motion is to prevent opposing parties from asking prejudicial questions and introducing prejudicial evidence in front of the jury without first seeking leave of court. Id.; Weidner v. Sanchez, 145 S.W.3d 353, 363 (Tex.App., Houston [14th Dist.] 2000, no pet.). Judges have the inherent power to regulate behavior in their courtrooms. Dow Chemical, 46 S.W.3d at 240. The imposition of sanctions for violation of an order in limine is left to the sound discretion of the trial court, and an appellate court will not reverse a trial court's decision on sanctions absent a clear abuse of discretion. Cre v. Cummings, 134 S.W.3d 835, 838 F.39 (Tex.2004); Vulcan Materials, 2004 WL 2597852 at *.											
2046	Vela v. Wagner & Brown, Ltd., 203 S.W.3d 37	307A+3	A motion in limine is a procedural device that permits a party to identify, pre-trial, certain evidentiary issues the court may be asked to rule upon. Vulcan Materials, 2004 WL 2597852 at *. The purpose of such a motion is to prevent opposing parties from asking prejudicial questions and introducing prejudicial evidence in front of the jury without first seeking leave of court. Id.; Weidner v. Sanchez, 145 S.W.3d 353, 363 (Tex.App., Houston [14th Dist.] 2000, no pet.). Judges have the inherent power to regulate behavior in their courtrooms. Dow Chemical, 46 S.W.3d at 240. The imposition of sanctions for violation of an order in limine is left to the sound discretion of the trial court, and an appellate court will not reverse a trial court's decision on sanctions absent a clear abuse of discretion. Cre v. Cummings, 134 S.W.3d 835, 838 F.39 (Tex.2004); Vulcan Materials, 2004 WL 2597852 at *.	The imposition of sanctions for violation of an order in limine is left to the sound discretion of the trial court, and an appellate court will not reverse a trial court's decision on sanctions absent a clear abuse of discretion.	Is the imposition of sanctions for violation of an order in limine left to the sound discretion of the trial court, and an appellate court will not reverse a trial court's decision on sanctions absent a clear abuse of discretion?	Pretrial Procedure - Memo # 76 - C - TI.docx	R055-003281967-A055-003281968	Condensed, SA	0.83	0	1	0	1	
			A motion in limine is a procedural device that permits a party to identify, pre-trial, certain evidentiary issues the court may be asked to rule upon. Vulcan Materials, 2004 WL 2597852 at *. The purpose of such a motion is to prevent opposing parties from asking prejudicial questions and introducing prejudicial evidence in front of the jury without first seeking leave of court. Id.; Weidner v. Sanchez, 145 S.W.3d 353, 363 (Tex.App., Houston [14th Dist.] 2000, no pet.). Judges have the inherent power to regulate behavior in their courtrooms. Dow Chemical, 46 S.W.3d at 240. The imposition of sanctions for violation of an order in limine is left to the sound discretion of the trial court, and an appellate court will not reverse a trial court's decision on sanctions absent a clear abuse of discretion. Cre v. Cummings, 134 S.W.3d 835, 838 F.39 (Tex.2004); Vulcan Materials, 2004 WL 2597852 at *.											
2047	Vela v. Wagner & Brown, Ltd., 203 S.W.3d 37	30+3209	A motion in limine is a procedural device that permits a party to identify, pre-trial, certain evidentiary issues the court may be asked to rule upon. Vulcan Materials, 2004 WL 2597852 at *. The purpose of such a motion is to prevent opposing parties from asking prejudicial questions and introducing prejudicial evidence in front of the jury without first seeking leave of court. Id.; Weidner v. Sanchez, 145 S.W.3d 353, 363 (Tex.App., Houston [14th Dist.] 2000, no pet.). Judges have the inherent power to regulate behavior in their courtrooms. Dow Chemical, 46 S.W.3d at 240. The imposition of sanctions for violation of an order in limine is left to the sound discretion of the trial court, and an appellate court will not reverse a trial court's decision on sanctions absent a clear abuse of discretion. Cre v. Cummings, 134 S.W.3d 835, 838 F.39 (Tex.2004); Vulcan Materials, 2004 WL 2597852 at *.	The imposition of sanctions for violation of an order in limine is left to the sound discretion of the trial court, and an appellate court will not reverse a trial court's decision on sanctions absent a clear abuse of discretion.	Is the imposition of sanctions for violation of an order in limine left to the sound discretion of the trial court, and an appellate court will not reverse a trial court's decision on sanctions absent a clear abuse of discretion?	Pretrial Procedure - Memo # 77 - C - TI.docx	R055-003281967-A055-003281968	Condensed, SA	0.74	0	1	0	1	
			A motion in limine is a procedural device that permits a party to identify, pre-trial, certain evidentiary issues the court may be asked to rule upon. Vulcan Materials, 2004 WL 2597852 at *. The purpose of such a motion is to prevent opposing parties from asking prejudicial questions and introducing prejudicial evidence in front of the jury without first seeking leave of court. Id.; Weidner v. Sanchez, 145 S.W.3d 353, 363 (Tex.App., Houston [14th Dist.] 2000, no pet.). Judges have the inherent power to regulate behavior in their courtrooms. Dow Chemical, 46 S.W.3d at 240. The imposition of sanctions for violation of an order in limine is left to the sound discretion of the trial court, and an appellate court will not reverse a trial court's decision on sanctions absent a clear abuse of discretion. Cre v. Cummings, 134 S.W.3d 835, 838 F.39 (Tex.2004); Vulcan Materials, 2004 WL 2597852 at *.											
2048	Vela v. Ryan N., 92 Cal. App. 4th 1339	368+3	Although on its face the statute may appear to be unconstitutionally simply giving the jury the right to decide the issue, the statute is not unconstitutional. The analogy to the law of aiding and abetting "required something more than mere verbal solicitation of another person to commit a hypothetical act of suicide. Instead, the courts have interpreted the statute as proscribing "the direct aiding and abetting of a specific suicidal act... Some active and intentional participation in the events leading to the suicide are required in order to establish a violation." (McCullum v. CBS, Inc. (1988) 202 Cal.App.3d 989, 3007, 249 Cal.Rptr. 187, first italics in original, second italics omitted.) The statute is not unconstitutional. The statute is not unconstitutional. The statute is not unconstitutional.	In order to obtain a conviction for aiding, abetting or encouraging a suicide, the prosecution must prove the following elements: (1) the defendant specifically intended the victim's suicide; (2) the defendant undertook some active and direct participation in bringing about the suicide, such as by furnishing the victim with the means of suicide; and, finally, (3) the victim actually committed a specific, overt act of suicide. West's Ann.Cal.Penal Code § 401.	What are the elements required to establish a conviction for aiding, abetting and encouraging a suicide?	04.469.docx	LEGALISE-00122805-LEGALISE-00122806	SA, Sub	0.62	0		1	1	
			Although on its face the statute may appear to be unconstitutionally simply giving the jury the right to decide the issue, the statute is not unconstitutional. The analogy to the law of aiding and abetting "required something more than mere verbal solicitation of another person to commit a hypothetical act of suicide. Instead, the courts have interpreted the statute as proscribing "the direct aiding and abetting of a specific suicidal act... Some active and intentional participation in the events leading to the suicide are required in order to establish a violation." (McCullum v. CBS, Inc. (1988) 202 Cal.App.3d 989, 3007, 249 Cal.Rptr. 187, first italics in original, second italics omitted.) The statute is not unconstitutional. The statute is not unconstitutional. The statute is not unconstitutional.											

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences	
2049	Casa de Cambio Comand v. S.A. de C.V. v. United States, 48 Fed. Cl. 137	383+1010	Under the Tucker Act, illegal exaction jurisdiction lies where a plaintiff "has paid money over to the Government, directly or in effect," and "seeks return of all or part of that sum arguing that it was improperly paid, exacted, or taken from [it] in contravention of the Constitution, a statute, or a regulation." <i>Eastport S.S. Corp.</i> , 372 F.2d at 1107-08. In illegal exaction cases, in contrast to other actions for money damages, jurisdiction exists even when the Constitutional provision allegedly violated does not contain compensation mandating language. <i>Bowman v. United States</i> , 35 Fed.Cl. 397, 401 (1996). For example, in <i>Mallory v. United States</i> , 35 Fed.Cl. 446, 1963 WL 8603 (1963), this court's jurisdiction was established by the fact that the plaintiff was entitled to a fine imposed by a court-martial that had no jurisdiction over him. In these circumstances, the Court of Claims found that the fine was collected in violation of due process and concluded that "it seems that the plaintiff's claim for the recovery of the money that was taken from him by the Government without due process of law may be properly regarded as one 'founded... upon the Constitution,' for purposes of 28 U.S.C. " 1491." 163 C.C.I. at 454 (alteration in original). More recently, in <i>Commonwealth Edison Co. v. United States</i> , 46 Fed.Cl. 29, 42-43 (2000), appeal docketed, No. 00-5069 (Fed.Cir. Apr. 26, 2000) this court concluded that it had illegal exaction jurisdiction to consider claims that money had illegally been collected by the government pursuant to a provision that a legacy violated due process.	In illegal exaction cases, in contrast to other actions for money damages, jurisdiction exists in the Court of Federal Claims even when the constitutional provision allegedly violated does not contain compensation mandating language.	"Does jurisdiction exist in illegal exaction cases, even when the Constitutional provision allegedly violated does not contain compensation mandating language?"	01_7504.docx	LEGALASE-00124381-LEGALASE-00124382	SA, Sub	0.65	0	1	1	21,876	9,029	
	Spectrum Stores v. Gilgo Petroleum Corp., 632 F.3d 938	221+342	Under the act of state doctrine, "the courts of one country will not sit in judgment on the acts of the government of another, done within its own territory." <i>Underhill v. Hernandez</i> , 168 U.S. 250, 252, 18 S.Ct. 83, 42 L.Ed. 456 (1897). The doctrine is grounded in the principle that "judicial review of acts of state of a foreign power could embarrass as the conduct of foreign relations by the political branches of the government." <i>First Nat'l City Bank v. Banco Nacional de Cuba</i> , 406 U.S. 759, 765, 92 S.Ct. 1808, 32 L.Ed.2d 466 (1972). The doctrine thus overlaps in many respects with the political question doctrine, as it is rooted in constitutional separation-of-powers concerns. See <i>Banco Nacional de Cuba v. Sabatino</i> , 376 U.S. 398, 425, 84 S.Ct. 923, 11 L.Ed.2d 804 (1964). It recognizes "the thoroughly sound principle that on occasion individual litigants may have to forgo decision on the merits of their claims because the involvement of the courts in such a decision might frustrate the conduct of United States foreign policy."	The act of state doctrine overlaps in many respects with the political question doctrine, as it is rooted in constitutional separation-of-powers concerns; it recognizes the thoroughly sound principle that on occasion individual litigants may have to forgo decision on the merits of their claims because the involvement of the courts in such a decision might frustrate the conduct of United States foreign policy.	Does the act of state doctrine prohibit United States courts from sitting in judgment of official acts taken by another country within its own borders that might frustrate the conduct of foreign relations by the political branches of the government?	International Law - Memo # 307 - C - SIS.docx	LEGALASE-00014457-LEGALASE-00014458	Condensed, SA, Sub	0.65	0	1	1	1	1	
2050	United States v. Labs of Virginia, 272 F. Supp. 2d 764	221+342	A similar analysis also colors our disposition of Defendants' act of state arguments. The act of state doctrine prohibits United States courts from sitting in judgment of official acts taken by another country within its own borders that might frustrate the conduct of foreign relations by the political branches of the government. <i>W.S. Kirkpatrick & Co., Inc. v. Envtl. Tectonics Corp. Int'l</i> , 493 U.S. 400, 408, 110 S.Ct. 701, 107 L.Ed.2d 816 (1990). The policies underlying the doctrine include their own territory, and the avoidance of embarrassment to the Executive Branch in its conduct of foreign relations." <i>Id.</i> , <i>United States v. 2,507 Live Canary Winged Parakeets</i> , 689 F.Supp. 1106, 1120 (S.D.Fla.1988). Thus, the doctrine requires that courts "not adjudicate a politically sensitive dispute which would require the court to judge the legality of the sovereign act of a foreign state." <i>Mol. Inc. v. People's Rep. of Bangl.</i> , 572 F.Supp. 79, 83 (D.Or. 1983) (internal citations and quotations omitted). That is, act of state issues arise only when "a court must decide" that is, when the outcome of the case turns upon "the effect of official action by a foreign sovereign. When that question is not in the case, neither is the act of state doctrine." <i>W. S. Kirkpatrick</i> , 493 U.S. at 406, 110 S.Ct. 701.	Does an act of state issue arise only when a court must decide the outcome of the case turns upon the effect of official action by a foreign sovereign. When that question is not in the case, neither is the act of state doctrine?	Does an act of state issue arise only when a court must decide the outcome of the case turns upon the effect of official action by a foreign sovereign?	International Law - Memo # 308 - C - SIS.docx	ROSS-00288325-ROSS-00288326	Condensed, SA	0.83	0	1	0	1	1	1
2051															
2052	Int'l Tin Council v. Amalgamated Inc., 138 Mic. 2d 383	221+342	Under this doctrine it is recognized that even where sovereign immunity does not technically exist, certain international disputes more properly should be resolved by the executive branch of the United States government rather than by the courts. Generally, this doctrine is invoked where the dispute is intrinsically involved with some sovereign function of a foreign entity so that political as well as purely private commercial issues are implicated. ITC urges the applicability of this doctrine to lit. citing <i>Mol. Inc. v. People's Republic of Bangladesh</i> , 572 F.Supp. 79, aff'd, 9th Cir., 736 F.2d 1336, cert. denied 469 U.S. 1037, 105 S.Ct. 513, 83 L.Ed.2d 403, where the court declined to interfere with Bangladesh's exercise of its sovereign function of regulating wildlife. Similarly cited by petitioner is <i>International Association of Machinists v. OPEC</i> , 477 F.Supp. 553. In that case, plaintiffs sought to assert an antitrust claim against OPEC on the ground of prior-filing. The Court declined jurisdiction on the ground of sovereign immunity.	Under Act of State Doctrine, even where sovereign immunity does not technically exist, certain international disputes more properly should be resolved by executive branch of United States government rather than by courts.	Under the Act of State Doctrine should certain international disputes more properly be resolved by the executive branch of the United States government rather than by the courts?	International Law - Memo # 423 - C - MJS.docx	ROSS-00285689-ROSS-00285690	Condensed, SA, Sub	0.79	0	1	1	1	1	

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2053	Drexel Burnham Lambert Corp. Inc. v. Federal Reserve Bank of Dallas, 810 F. Supp. 1375	22:1-42	Defendants also argue that plaintiffs amended and supplemental complaints are barred according to the Act of State Doctrine. The Act of State Doctrine precludes courts of the United States from questioning the validity of public acts of a sovereign state, and the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory. Redress of grievances by reason of such acts must be obtained through the means open to be availed of by sovereign powers as between themselves. See <i>Dunhill of London, Inc. v. Cuba</i> , 425 U.S. 682, 691 n. 7, 96 S.Ct. 1864, 1869 n. 7, 48 L.Ed.2d 301 (1975) (<i>Citing Underhill v. Hernandez</i> , 118 U.S. 250, 18 S.Ct. 83, 42 L.Ed. 1039 (1906)). Defendants also argue that the Act of State Doctrine precludes application of actions that foreign states take on their own soil that might embarrass the Executive Branch or interfere with foreign policy. See <i>Dunhill</i> , 425 U.S. at 688, 96 S.Ct. at 1863, 48 L.Ed.2d at 313.	Purpose of Act of State Doctrine is to avoid adjudication of actions that foreign states take on their own soil that might embarrass Executive Branch or interfere with foreign policy.	Is the purpose of the Act of State Doctrine to avoid adjudication of actions that foreign states take on their own soil that might embarrass the Executive Branch or interfere with foreign policy?	International Law - Memo # 426 - C - MLS.docx	ROSS-003288476-K055-003288476	Condensed, SA	0.61	839 0	15,344 0	14,873 0	21,876 1	9,079
			Unlike the act of state doctrine, sovereign immunity is not merely a defense on the merits. It is jurisdictional in nature. If sovereign immunity is not asserted, the court is not required to consider it. The court is required to hear the case and must enter an order of dismissal. <i>Verlinden B.V. v. Central Bank of Nigeria</i> , 461 U.S. 480, 493 n. 20, 103 S.Ct. 1962, 1971 n. 20, 78 L.Ed.2d 83 (1983); <i>Sheldon ex rel. Olsen v. Government of Mexico</i> , 729 F.2d 641, 644 (9th Cir.), cert. denied, 469 U.S. 917, 105 S.Ct. 295, 83 L.Ed.2d 330 (1984). In contrast, the act of state doctrine merely requires that a court, after exercising jurisdiction, decline to review certain issues. In particular, the validity or propriety of foreign acts of state, foreign acts of state that are not subject to U.S. law, and foreign acts of state that are not subject to U.S. law. <i>Verlinden</i> , 461 U.S. at 480, 103 S.Ct. at 1962, 78 L.Ed.2d at 83 (1983); <i>Richard A. Long v. American Metal Co.</i> , 248 U.S. 304, 309, 385 Ct. 312, 314, 62 L.Ed. 733 (1918); <i>Arango v. Guzman Travel Advisors Corp.</i> , 621 F.2d 1371, 1380 (5th Cir. 1980). Because sovereign immunity is jurisdictional and the act of state defense is not, we must consider sovereign immunity before reaching the act of state doctrine. Restatement (Revised) of Foreign Relations Law of the United States "469 reporters," note 11 (Text Draft No. 6, 1985).	Sovereign immunity is jurisdictional in nature, and thus if it exists, court lacks both personal and subject-matter jurisdiction to hear case and must enter an order of dismissal. <i>Verlinden B.V. v. Central Bank of Nigeria</i> , 461 U.S. 480, 493 n. 20, 103 S.Ct. 1962, 1971 n. 20, 78 L.Ed.2d 83 (1983); <i>Sheldon ex rel. Olsen v. Government of Mexico</i> , 729 F.2d 641, 644 (9th Cir.), cert. denied, 469 U.S. 917, 105 S.Ct. 295, 83 L.Ed.2d 330 (1984). In contrast, the act of state doctrine merely requires that a court, after exercising jurisdiction, decline to review certain issues. In particular, the validity or propriety of foreign acts of state, foreign acts of state that are not subject to U.S. law, and foreign acts of state that are not subject to U.S. law. <i>Verlinden</i> , 461 U.S. at 480, 103 S.Ct. at 1962, 78 L.Ed.2d at 83 (1983); <i>Richard A. Long v. American Metal Co.</i> , 248 U.S. 304, 309, 385 Ct. 312, 314, 62 L.Ed. 733 (1918); <i>Arango v. Guzman Travel Advisors Corp.</i> , 621 F.2d 1371, 1380 (5th Cir. 1980). Because sovereign immunity is jurisdictional and the act of state defense is not, we must consider sovereign immunity before reaching the act of state doctrine. Restatement (Revised) of Foreign Relations Law of the United States "469 reporters," note 11 (Text Draft No. 6, 1985).	"Since sovereign immunity is jurisdictional in nature, does a court lack both personal and subject-matter jurisdiction to hear case and must the court enter an order of dismissal?"	International Law - Memo # 443 - C - MLS.docx	ROSS-003311026-K055-003311027	Condensed, SA, Sub	0.71	0 1	1 1	1 1	1 1	1
2054	Sharon v. Time, 599 F. Supp. 538	22:1-42	The act of state doctrine provides that a United States court "will refrain from examining the validity of an act of a foreign state by which that state has exercised its jurisdiction to give effect to its public interests." Restatement (Second) of Foreign Relations Law "4 (1962). The doctrine is limited to laws, decrees, decisions, seizures, and other officially authorized "public acts." The acts to which the doctrine has been applied have been official attempts to implement public policy, and a fairly narrow range of acts that are not subject to U.S. law. <i>Verlinden</i> , 461 U.S. at 480, 103 S.Ct. at 1962, 78 L.Ed.2d at 83 (1983). At least where it is alleged to have occurred with respect to a subject not normally controlled by public acts. Thus, in <i>Alfred Dunhill of London, Inc. v. Republic of Cuba</i> , 425 U.S. 682, 96 S.Ct. 1854, 48 L.Ed.2d 301 (1975), the Supreme Court rejected the view that an act of state was established by a representation of counsel that an ordinary commercial obligation had been officially repudiated. The Court held that Cuba's mere refusal to pay the debt did not constitute a repudiation sufficient to trigger the act of state doctrine. <i>Verlinden</i> , 461 U.S. at 480, 103 S.Ct. at 1962, 78 L.Ed.2d at 83 (1983). The act of state doctrine is not a jurisdictional bar. <i>Verlinden</i> , 461 U.S. at 480, 103 S.Ct. at 1962, 78 L.Ed.2d at 83 (1983). The Government brief was offered in evidence indicating that Cuba had repudiated its obligations in general or any class thereof or that it had a sovereign matter determined to confiscate the amounts due three foreign importers.	Act of state doctrine provides that a United States court will refrain from examining validity of act of foreign state by which that state has exercised its jurisdiction to give effect to its public interests.	Does the act of state doctrine provide that a United States court will refrain from examining the validity of an act of a foreign state by which that state has exercised its jurisdiction to give effect to its public interests?	International Law - Memo # 443 - C - MLS.docx	ROSS-003282659-K055-003282659	Condensed, SA	0.85	0 1	1 1	0 1	1 1	1
			The act of state doctrine "precludes the courts of this country from questioning the validity of public acts of a sovereign state, and the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory. Redress of grievances by reason of such acts must be obtained through the means open to be availed of by sovereign powers as between themselves. See <i>Dunhill of London, Inc. v. Cuba</i> , 425 U.S. 682, 691 n. 7, 96 S.Ct. 1864, 1869 n. 7, 48 L.Ed.2d 301 (1975) (<i>Citing Underhill v. Hernandez</i> , 118 U.S. 250, 18 S.Ct. 83, 42 L.Ed. 1039 (1906)). Defendants also argue that the Act of State Doctrine precludes application of actions that foreign states take on their own soil that might embarrass the Executive Branch or interfere with foreign policy. See <i>Dunhill</i> , 425 U.S. at 688, 96 S.Ct. at 1863, 48 L.Ed.2d at 313.	In invoking act-of-state doctrine, which precludes courts of United States from questioning the validity of public acts of a sovereign state, and the independence of every other sovereign state, a litigant must establish that what is involved is (1) a public act (2) committed by a recognized foreign power (3) exclusively within its own territory.	In invoking act-of-state doctrine must a litigant establish that what is involved is (1) a public act (2) committed by a recognized foreign power exclusively within its own territory?	020456.docx	LEGALESE-00125185-LEGALESE-00125190	Condensed, SA, Sub	0.4	0 1	1 1	1 1	1 1	1
2056	Outboard Marine Corp. v. Peeters, 481 F. Supp. 384	22:1-42	The act of state doctrine "precludes the courts of this country from questioning the validity of public acts of a sovereign state, and the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory. Redress of grievances by reason of such acts must be obtained through the means open to be availed of by sovereign powers as between themselves. See <i>Dunhill of London, Inc. v. Cuba</i> , 425 U.S. 682, 691 n. 7, 96 S.Ct. 1864, 1869 n. 7, 48 L.Ed.2d 301 (1975) (<i>Citing Underhill v. Hernandez</i> , 118 U.S. 250, 18 S.Ct. 83, 42 L.Ed. 1039 (1906)). Defendants also argue that the Act of State Doctrine precludes application of actions that foreign states take on their own soil that might embarrass the Executive Branch or interfere with foreign policy. See <i>Dunhill</i> , 425 U.S. at 688, 96 S.Ct. at 1863, 48 L.Ed.2d at 313.	In invoking act-of-state doctrine, which precludes courts of United States from questioning the validity of public acts of a sovereign state, a litigant must establish that what is involved is (1) a public act (2) committed by a recognized foreign power (3) exclusively within its own territory.	In invoking act-of-state doctrine must a litigant establish that what is involved is (1) a public act (2) committed by a recognized foreign power exclusively within its own territory?	020456.docx	LEGALESE-00125185-LEGALESE-00125190	Condensed, SA, Sub	0.4	0 1	1 1	1 1	1 1	1

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2057	United States v. Best, 172 F. Supp. 2d 656	221+329	As restated by the American Law Institute, the primary basis of extraterritorial jurisdiction recognized by the United States is the "subjective territorial principle," by which "a state has jurisdiction to prescribe law that has or is intended to have a substantial effect outside its territory that has or is intended to have a substantial effect outside its territory." RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 4021(b) ("RESTATEMENT"). The United States also recognizes five other principles of jurisdiction under international law by which a nation may reach conduct outside its territory: (1) the objective territorial principle; (2) the protective principle; (3) the nationality principle; (4) the passive personality principle; and (5) the universality principle. RESTATEMENT (Third) of the Foreign Relations Law of the United States § 4021(a).	Does the United States recognize principles of jurisdiction under international law by which a nation may reach conduct outside its territory?	International Law - Memo #816 - C-ANC.docx	ROSS-002384614-ROSS-002384616	Condensed, Order, SA	0.66	1	15,344	14,873	21,876	9,029
2058	Quind City Bank & Tr. v. Jim Kircher & Associates, P.C., 804 N.W.2d 63	388+911	A ruling sustaining a motion in limine is generally not an evidentiary ruling. Twyford v. Weber, 220 N.W.2d 935, 933 (Iowa 1974). Rather, a ruling sustaining a motion in limine simply adds a procedural step to the trial. In re Estate of Bess, 2004 WL 1210101 (Iowa Ct. App. 2004). In re Estate Power Co., 483 N.W.2d 310, 317 (Iowa 1992) (recognizing a ruling sustaining a motion in limine "merely adds a procedural step to the trial and does not constitute an evidentiary ruling"). Twyford v. Weber, 220 N.W.2d 935, 933 (Iowa 1974). A ruling of evidence [and that] if the evidence is not offered, there is nothing preserved to review on appeal". Thus, a motion in limine "serves the useful purpose of raising and pointing out before trial certain evidentiary rulings the court may be called upon to make during the course of the trial and if sustained, excludes evidence that would be inadmissible under the rules of evidence until its admissibility is determined by the trial court, outside the presence of a jury, in an offer of proof.	What is the purpose of a motion in limine?	024268.docx	LEGALEASE-00124707-LEGALEASE-00124708	Condensed, SA	0.67	0	1	0	1	
2059	Delnick v. Outboard Marine Corp., 197 Ill. App. 3d 770	272+695	It is essential to note that plaintiff does not raise a specific challenge to the pretrial granting of summary judgment in favor of defendant on the res ipsa loquar issue in its brief. In the trial court, defendant moved for summary judgment on the res ipsa issue presented in court 1 of plaintiff's complaint. In doing so, it attached the depositions of plaintiff and his expert witnesses, Joseph, Adelman. Plaintiff filed a response to defendant's motion for summary judgment, but did not raise the issue of defendant which effectively eliminated the res ipsa issue from the case. This procedure was proper as the application of the doctrine in a given case is a question of law which must be decided in the first instance by the trial court (Imig v. Beck, 1938) 115 Ill.2d 118, 27, 104 Ill. Dec. 767, 503 N.E.2d 324, and it is the proper function of the trial court, at the pretrial motion stage, to determine the appropriateness of res ipsa loquar. Plaintiff's motion for summary judgment was properly denied. See Hospital (1979), 78 Ill. App. 3d 17, 25, 33 Ill. Dec. 346, 356 N.E.2d 1088, aff'd in part & rev'd in part on other grounds (1980), 83 Ill.2d 282, 47 Ill. Dec. 385, 415 N.E.2d 390. Because reliance on the doctrine must be pleaded (Walker v. Rumer, 1978), 72 Ill.2d 495, 502, 21 Ill. Dec. 362, 381 N.E.2d 689), and there was no allegation of res ipsa remaining in the case, no such issue remained before the jury. Therefore, it would have been proper for the court to grant summary judgment. Consequently, plaintiff's contentions in that regard must fail.	Is the doctrine of res ipsa loquar a question of law that is determined at the pretrial motion stage, to determine appropriateness of res ipsa loquar to facts of the case.	024319.docx	LEGALEASE-00125049-LEGALEASE-00125050	Condensed, Sub	0.82	0	1	1	1	
2060	Katunichsky v. Perry, 152 Cal. App. 4th 1288	307+43	While trial judges ordinarily enjoy broad discretion with respect to the scope of evidence admitted at trial, their discretion is not unlimited. A court's discretion is limited by the legal principles applicable to the case. (Adams v. Aerojet General Corp., 2001) 86 Cal. App. 4th 1324, 1330, 104 Cal. Rptr. 2d 116.) "The scope of discretion always resides in the particular law being applied, i.e., in the "legal principles governing the subject of [the] action." Action that transgresses the confines of the subject of the action is not within the scope of discretion. (Kashani v. All North Station "A" Base, 2004) 115 Cal. App. 4th 1288, 1297, 25 Cal. Rptr. 704. Thus, if the trial court's in limine ruling was based upon a misinterpretation of applicable law, an abuse of discretion has been	"With respect to the admission of evidence in ruling on motions for summary judgment, the trial court's discretion is limited by the legal principles applicable to the case?"	024555.docx	LEGALEASE-00124263-LEGALEASE-00124264	Condensed, SA	0.78	0	1	0	1	

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2061	Kutshinsky v. Perry, 152 Cal. App. 4th 1288	307A+3	While trial judges ordinarily enjoy broad discretion with respect to the admission and exclusion of evidence in ruling on motions in limine (Greer v. Bughiesla [2000] 141 Cal.App.4th 1150, 1156, 46 Cal.Rptr.3d 780 (Greer v. Bughiesla [2000] 141 Cal.App.4th 1150, 1156, 46 Cal.Rptr.3d 780 (Greer v. Bughiesla [2000] 141 Cal.App.4th 1150, 1156, 46 Cal.Rptr.3d 780 (Greer v. Bughiesla [2000] 141 Cal.App.4th 1150, 1156, 46 Cal.Rptr.3d 780 (Greer v. Bughiesla [2000] 141 Cal.App.4th 1150, 1156, 46 Cal.Rptr.3d 780 (Greer v. Bughiesla [2000] 141 Cal.App.4th 1150, 1156, 46 Cal.Rptr.3d 780 (Greer v. Bughiesla [2000] 141 Cal.App.4th 1150, 1156, 46 Cal.Rptr.3d 780 (Greer v. Bughiesla [2000] 141 Cal.App.4th 1150, 1156, 46 Cal.Rptr.3d 780 (Greer v. Bughiesla [2000] 141 Cal.App.4th 1150, 1156, 46 Cal.Rptr.3d 780 (Greer v. Bughiesla [2000] 141 Cal.App.4th 1150, 1156, 46 Cal.Rptr.3d 780 (Greer v. 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2067	Kulman v. Comm'n for Lawyer Discipline, 197 S.W.3d 867	307A-3	A motion in limine is a procedural device that permits a party to identify, prior to trial, certain evidentiary issues the court may be asked to rule upon. See Harford Accident & Indem. Co. v. McCordell, 369 S.W.2d 331, 335 (Tex.1963); Fort Worth Hotel Ltd. P'hip v. Enserch Corp., 977 S.W.2d 746, 757 (Tex.App.-Fort Worth 1998, no pet.). The purpose of such a motion is to prevent opposing parties from asking prejudicial questions seeking leave of court. Welsher v. Sanchez, 14 S.W.3d 343, 343 (Tex. App. Houston [14th Dist.] 2000, no pet.); Enserch Corp., 977 S.W.2d at 757. The granting of the motion is not a final ruling on the evidence. Bifano v. Young, 666 S.W.2d 536, 541 (Tex.App.-Corpus Christi 1983, writ ref'd n.e.g.).	A "motion in limine" filed in a civil case generally used as a substitute for evidentiary objections at trial and as a means to exclude evidence from trial for violations of the disclosure rules.	Is a motion in limine a procedural device that permits a party to identify certain evidentiary issues the court may be asked to rule upon?	Pretrial Procedure - Memo #857 - C - TL.docx	ROSS-003282954-ROSS-003282957		Condensed, SA	0.81	0	14,873	21,276	9,029
2068	Premium Gbarsi Int'l, Ltd. v. Farnie-Dutton-Lewis Ins. Agency, 200 Ark. 357	307A-3	A motion in limine filed in a civil case is generally used as a substitute for evidentiary objections at trial and as a means to exclude evidence from trial for violations of the disclosure rules. Ark. App. 235, 235-12, 62 P.3d 976, 980 (App.2003). A trial court is given considerable discretion in resolving those issues. State v. Duzan, 176 Ariz. 463, 465, 862 P.2d 223, 225 (App.1993), and so we do not review its decisions until they are made. See McMurren v. JMC Builders, Inc., 204 Ark. 345, 351, 20 n.7, 63 P.3d 1082, 1088 (App.2003) (holding against advisory opinions). Because the trial court has not ruled on the admissibility of this evidence, we remand, allowing it to exercise its discretion without adding confusion to what makes such a ruling.	"Motion in limine" filed in a civil case generally used as a substitute for evidentiary objections at trial and as a means to exclude evidence from trial for violations of the disclosure rules.	Is a motion in limine filed in a civil case a substitute for evidentiary objections at trial and as a means to exclude evidence from trial for violations of the disclosure rules?	Pretrial Procedure - Memo # 919 - C - TL.docx	ROSS-003282134-ROSS-003282135		Condensed, SA	0.74	0	1	1	1
2069	People v. Alvarez-Garcia, 395 Ill. App. 3d 719	203F-527	In Illinois, the following are three mental states or conduct that can accompany acts that cause a murder: (1) a defendant can intend to kill or do great bodily harm to the victim (intentional murder); (2) a defendant can know that his act creates a strong probability of death or great bodily harm to the victim (knowing murder, also known as strong probability murder); (3) a defendant can believe that his act will result in death or great bodily harm to the victim (reckless murder). People v. Davis, 233 Ill.2d 244, 263, 330 Ill.Dec. 744, 909 N.E.2d 766 (2009) (citing 720 ILCS 5/97(a) (West 2004)). "When the intent is to kill, there is no predicate felony; it is only when there is no intent to kill that a predicate felony is possible." People v. Phillips, 383 Ill.App.3d 521, 539, 322 Ill.Dec. 139, 890 N.E.2d 1058 (2008), quoting People v. Boyd, 356 Ill.App.3d 254, 259, 292 Ill.Dec. 108, 825 N.E.2d 84 (2005) (felony murder may be predicated on the aggravated discharge of a firearm). Therefore, in order to support a conviction for felony murder, the defendant must have committed an act of felony murder must have an independent felonious purpose. Davis, 233 Ill.2d at 264, 330 Ill.Dec. 744, 909 N.E.2d 766, quoting People v. Morgan, 197 Ill.2d 404, 458, 259 Ill.Dec. 405, 758 N.E.2d 813 (2001).	Three mental states or conduct that can accompany acts that cause a murder are: (1) a defendant can intend to kill or do great bodily harm to the victim, which is knowing murder or strong probability murder; and (3) a defendant can believe that his act will result in death or great bodily harm to the victim, which is felony murder. S.H.A. 720 ILCS 5/9-1(b).	What are the mental states that can accompany the act of murder?	0159833.docx	LEGALEASE-00125748-LEGALEASE-00125749		Condensed, SA, Sub	0.62	0	1	1	1
2070	XLI Combustor (Inc.) AB v. Aeril Hassan Shaul, 281 E. Supp. 24457	38F-66	Plaintiff now claims that Cargill is liable for trespass to chattels because it intentionally placed waste water lines into plaintiff's shipping containers thereby depriving plaintiffs of the use of those containers for the period of time that the waste lines remained in the containers. Under the principle of law that allows recovery for a trespass to chattels, it is necessary that the defendant have acted for the purpose of interfering with the chattel, or what is almost the same thing, that he have acted with knowledge that such would be the result of his conduct. Trespass is an intentional tort at least to the extent, while the trespasser, to be actionable, must intend the act which amounts to or produces the unlawful invasion, and the intrusion must, at least be the immediate or inevitable consequence of what he willfully does, or which he does so negligently as to amount to willfulness.	To establish a right to recover for trespass to chattels under New York law, a plaintiff must establish both the alleged trespasser acted for the purpose of interfering with the chattel, or acted with knowledge that such would be the result of his conduct; while the trespasser need not intend or expect the damaging consequences of his intrusion, he must intend the act which amounts to or produces the unlawful invasion, and the intrusion must at least be the immediate or inevitable consequence of what he willfully does, or which he does so negligently as to amount to willfulness.	How can a right to recovery for trespass to chattels be established?	047207.docx	LEGALEASE-00125810-LEGALEASE-00125811		Condensed, SA, Sub	0.4	0	1	1	1
2071	Mohamir v. Washington Metropolitan Area Transit Auth., 451 F. Supp. 2d 19	21F-68	Court has neither concluded that "[t]o provide the full value of the investment," the government is obligated to invest in the stock market expenses and fees." Sheldon v. U.S., 34 Fed.Cl. 355, 377 (1995); see also Dow Chemical Co. v. United States, 36 Fed.Cl. 1, 15, 27-28 (1996). To fully compensate Plaintiff's losses, then, Defendant is obligated to pay compounded interest as of the date the forfeiture became effective until the date the government tenders final payment.... Id. at 378. Generally, "the choice of an appropriate rate of interest is a question of fact, to be determined by the court.... In fixing an award of interest, the district court should consider the nature of the investment, the risk involved, and the investing funds so as to produce a reasonable return while maintaining safety of principal." Washington Metro. Area Transit Auth. v. One Parcel of Land in Montgomery County, Maryland, 706 F.2d 1312, 1322 (4th Cir.1983) (citation omitted).	In fully compensating property owner for a taking, choice of an appropriate rate of interest is a question of fact. The district court should determine what a reasonably prudent person investing funds so as to produce a reasonable return while maintaining safety of principal would have achieved.	% the choice of an appropriate rate of interest : a question of fact, to be determined by the court?	017576.docx	LEGALEASE-00125900-LEGALEASE-00125901		Condensed, SA	0.62	0	1	1	1

Application of

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences	
	Outboard Marine Corp. v. Thomas, 773 F.2d 883	21:6-5	The EPA's selective quoting of that section better suits its purposes than does the full statute, but even the EPA version is only of limited help as the need for a response has already been determined. The language for the "purpose" of [...] enforcing the provisions" of the subchapter also adds nothing specific. What the EPA omitted in its warrant application from that section plainly limits its authority to enter, whatever its broad language, to the "purposes specified in the preceding sentence." The preceding sentence refers to the necessity that any person who has had some involvement with the hazardous substance furnish information relating to such substance and permit EPA access to any records pertaining to the substance. A reading of the full section set forth in footnote 3 puts the authority in context, and deflates the EPA's selective and expanded reading of this section. It is germane to the application, as the EPA asserts, not for what the section says, but for what the section does not say. The power to enter at reasonable times is not given to begin any response construction, or even for design and surveying purposes, if we assume they are to be separated. The authority to enter to inspect and obtain samples, gather information, and inspect records is limited to the hazardous substance itself; the section does not provide authority for taking subsurface samples to determine what construction can be supported or for the other things the EPA seeks to accomplish as preliminary to construction.	Environmental Protection Agency's authority to enter property to inspect and obtain samples, gather information and inspect records is limited to hazardous substance itself; section (42 U.S.C.A.S 9604(e)) does not provide authority for taking subsurface samples to determine what construction can be supported or for design and surveying purposes as preliminary to construction of remedial operations on hazardous waste site. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, § 104(e), 42 U.S.C.A.S 9604(e).	% the authority of Environmental Protection Agency to inspect and obtain samples, gather information, and inspect records limited to a hazardous substance only?"	013492.docx	LEGALASE-00126576-LEGALASE-00126577	Condensed, SA, Sub 0.65	0.65	839	0	1	14,873	21,876	9,079
										0	0	1	1	1	1
2077	James P. Paul Water Co. v. Arizona Corp. Comm'n, 137 Ariz. 426	317A+113	It is well established that Arizona's public policy respecting monopoly corporations, such as water companies, is one of regulated monopoly over the water-holding competition. Corporation Commission of Arizona v. Tucson Water Co., 10 Ariz. 125, 12 P.2d 420 (1932); Tucson Insurance and Bonding Agency's, supra. Under this system, the Commission is statutorily required to investigate all applicants for a certificate of convenience and necessity for a given area, see A.R.S. "" 40-281 to 285, and to issue a certificate only upon a showing that the issuance to a particular applicant would serve the public interest. Pacific Greyhound Lines v. Sun Valley Bus Lines, 70 Ariz. 66, 245 P.2d 404 (1956). Once granted, the certificate confers upon its holder an exclusive right to provide the relevant service for as long as the holder can provide adequate service at a reasonable rate. [I]f a certificate of convenience and necessity within our system of regulated monopoly means anything, it means that its holder has the right to an opportunity to adequately provide the service it was certified to provide. Only upon a showing that a certificate holder, presented with a demand for service which is reasonable in light of projected need, has failed to supply such service at a reasonable rate can the Commission thereafter issue its certificate. Our best hope is that the Legislature will amend A.R.S. 40-281 to provide not provide certificate holders with an opportunity to provide adequate service at reasonable rates before deletion of a certificated area could be made would be antithetical to the public interest for several reasons. First, it would encourage price competition between public service corporations, the very mode of operation which the Legislature has rejected. Second, it encourages over-entensive development. In order to ensure that they will be able to supply service as the need arises, companies will be inclined to develop areas which they are not prepared to serve. Our workers' compensation system is supposed to benefit injured workers by providing benefits and full compensation through a basic "no-fault" system (Mandulide v. Elkins Industries, Inc., 161 W. Va. 695, 700, 246S.E.2d 907, 911 (1978)), supervised by statute as recognized by, Bell v. Vecellio & Grogan, Inc., 197 W. Va. 138, 475 S.E.2d 138 (1996) (hereinafter Bell II) and to protect employees' "from the financial consequences of civil liability to injured employees." Mayles v. Shoney's, Inc., 185 W. Va. 88, 91, 405 S.E.2d 15, 18 (1990). W. Va. Code 23-4-2(c)(1) (1994) states, in pertinent part: It is declared that enactment of this chapter and the establishment of the workers' compensation system in this chapter was and is intended to remove from the common law tort system all disputes between or among employers and employees regarding the compensation to be received for injury or death to an employee except as herein expressly provided, and to establish a system which compensates even though the injury or death of an employee may be caused by his or her own fault or the fault of a co-employee; that the immunity established in sections six and six a ["" 23-2-6 and 23-2-6a], article two of this chapter, is an essential aspect of this workers' compensation system; that the intent of the Legislature in providing immunity from common law suit was and is to protect those so immunized from litigation outside the workers' compensation system except as herein expressly provided....	Once granted, a certificate of convenience and necessity confers upon its holder an exclusive right to provide the relevant service for as long as the grantee can provide adequate service at a reasonable rate. A.R.S. §§ 40-281 to 40-285.	Does the granted certificate of convenience and necessity confer upon its holder an exclusive right to provide services at reasonable rates?	Public Utilities - Memo 196- AM.docx	ROSS-003286755-ROSS-003286757	SA, Sub	0.92	0	0	1	1	1	1
										0	0	1	1	1	1
2078	Miller v. CIV Hosp., 197 W. Va. 403	41:346	Our workers' compensation system is supposed to benefit injured workers by providing benefits and full compensation through a basic "no-fault" system (Mandulide v. Elkins Industries, Inc., 161 W. Va. 695, 700, 246S.E.2d 907, 911 (1978)), supervised by statute as recognized by, Bell v. Vecellio & Grogan, Inc., 197 W. Va. 138, 475 S.E.2d 138 (1996) (hereinafter Bell II) and to protect employees' "from the financial consequences of civil liability to injured employees." Mayles v. Shoney's, Inc., 185 W. Va. 88, 91, 405 S.E.2d 15, 18 (1990). W. Va. Code 23-4-2(c)(1) (1994) states, in pertinent part: It is declared that enactment of this chapter and the establishment of the workers' compensation system in this chapter was and is intended to remove from the common law tort system all disputes between or among employers and employees regarding the compensation to be received for injury or death to an employee except as herein expressly provided, and to establish a system which compensates even though the injury or death of an employee may be caused by his or her own fault or the fault of a co-employee; that the immunity established in sections six and six a ["" 23-2-6 and 23-2-6a], article two of this chapter, is an essential aspect of this workers' compensation system; that the intent of the Legislature in providing immunity from common law suit was and is to protect those so immunized from litigation outside the workers' compensation system except as herein expressly provided....	Workers' compensation system benefits injured workers by providing benefits and full compensation through a basic "no-fault" system and protects employers from financial consequences of civil liability to injured employees.	Does the workers compensation system benefit injured workers by providing benefits and full compensation through a basic no-fault system and protect employers from the financial consequences of civil liability to injured employees?	048393.docx	LEGALASE-00126854-LEGALASE-00126855	Condensed, SA, Sub 0.85	0.85	0	1	1	1	1	1
										0	1	1	1	1	1
2079															

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2.080	Kazarian v. California Welfare Institutions, 157 Cal.App. 139 (1941)	114-65	Respondent correctly asserts that a court of equity will make a final disposition of the litigation governing the circumstances as shown to exist at the time the decree is made, rather than at time the decree is made, rather than at time the decree is made. A supplemental pleading is not necessary to such end.	Court of Equity will make final disposition which is governed by circumstances shown to exist at time decree is made, rather than at time decree is made. A supplemental pleading is not necessary to such end.	Will the court of equity make a final disposition of the litigation governed by circumstances shown to exist at the time the decree is made?	Action- Memo # 835- C-360.docx	R055-003286054-R055-003286054	Condensed SA	0.93	839	15,344	14,873	21,876	9,079
2.081	Nesbitt v. Getty, 219 S.C. 221.	141E-38(1)	In the order on demurrer, now reviewed on appeal, it was well said, as follows: "In considering any constitutional question, there come into play the familiar postulates of the law that the courts will, if reasonably possible, uphold the constitutionality of a statute, and will not strike down a statute unless its unconstitutionality clearly appears. It is equally well established that school districts have no inherent right of local self-government. See Sillings v. City of Winston-Salem, 311 N.C. 689, 319 S.E.2d 23 (1984) (exclusive private franchise for trash collection in county limited by city's rights to annex and exercise police powers over private waste collection services); county franchisees, Calcasieu Sanitation Service, Inc. v. City of Lake Charles, 118 So.2d 179 (La App. 1960) (private trash hauler's contract rights to provide garbage collection service subject to city's authority to provide such service at lesser cost in annexed areas). In addition, a government's exercise of its right to compete with businesses that results in the diminution or destruction of the value of the businesses is not a compensable taking. Sillings, 311 N.C. at 686-87, 319 S.E.2d at 238-3. See also ARB Bus Lines, Inc. v. Urban Mass Transportation Admin., 831 F.2d 360, 362 (1st Cir.1987) (private enterprise not constitutionally protected from public competition); Hialeah v. City of Merced, 69 Cal.App.3d 585, 138 Cal.Rptr. 194 (1977) (municipal competition not a "taking")."	School districts have no inherent right of local self-government which is beyond legislative control, and legislature may, within constitutional limits, establish a new high school district without consent either of people affected or trustees of constituent districts.	Do school districts have inherent right of local self-government which is beyond legislative control?	Education- Memo # 49- C-51.docx	R055-003286005-R055-003286006	Condensed SA	0.74	0	1	0	1	1
2.082	Ladd v. Waste Sys. v. City of Phoenix, 168 Ariz. 563	148-2.2	Courts in other jurisdictions have decided that a government's garbage collection services in newly-annexed areas previously served by private trash hauler did not effect an unconstitutional taking, but rather lawful competition. See Sillings v. City of Winston-Salem, 311 N.C. 689, 319 S.E.2d 23 (1984) (exclusive private franchise for trash collection in county limited by city's rights to annex and exercise police powers over private waste collection services); county franchisees, Calcasieu Sanitation Service, Inc. v. City of Lake Charles, 118 So.2d 179 (La App. 1960) (private trash hauler's contract rights to provide garbage collection service subject to city's authority to provide such service at lesser cost in annexed areas). In addition, a government's exercise of its right to compete with businesses that results in the diminution or destruction of the value of the businesses is not a compensable taking. Sillings, 311 N.C. at 686-87, 319 S.E.2d at 238-3. See also ARB Bus Lines, Inc. v. Urban Mass Transportation Admin., 831 F.2d 360, 362 (1st Cir.1987) (private enterprise not constitutionally protected from public competition); Hialeah v. City of Merced, 69 Cal.App.3d 585, 138 Cal.Rptr. 194 (1977) (municipal competition not a "taking").	Government's exercise of its right to compete with businesses, that results in diminution and destruction of value of businesses within a msa, does not transform lawful competition into compensable taking. A.R.S. Const. Art. 2, § 17; U.S.C.A. Const. Amend. 5.	Does a government's exercise of its right to compete with businesses those results in the diminution or destruction of the value of the businesses within the area transform lawful competition into a compensable taking?	Eminent Domain - Memo # 1- GP.docx	R055-003300036-R055-003300038	Condensed SA, Sub 0.82	0	1	1	1	1	1
2.083	Eagle Bus Lines v. Illinois Commerce Comm'n, 3 Ill. 2d 66	317A-113	Both Plaza and Eagle are existing carriers and one has no greater right than the other. Illinois Highway Transportation Co. v. Commerce Comm'n, 404 Ill. 610, 30 N.E.2d 886. The Public Utilities Act declares the legislature's intention that a mere existence of a certificate shall not preclude the granting of a second certificate by its declaration that a certificate of convenience and necessity shall not be construed as granting a monopoly or exclusive privilege, immunity, or franchise. Ill. Const. § 235 (Ill. Const. § 23, par. 26). The Commerce Commission has made no such declaration. The Commerce Commission is engaged in furnishing public utility service shall operate in the same locality. People v. City of Chicago, 349 Ill. 304, 182 N.E. 419.	Provision of the Public Utilities Act that certificate of convenience and necessity shall not be construed to grant a monopoly or exclusive privilege, immunity, or franchise discloses the intention of the Legislature that mere existence of a certificate shall not preclude the granting of a second certificate. S.H.A. ch. 1112/232, § 5.6.	"Can a certificate of public convenience and necessity be construed as granting a monopoly or an exclusive privilege, immunity or franchise?"	042460.docx	LEGASE-00127662-LEGASE-00127663	Condensed SA, Sub 0.55	0	1	1	1	1	1

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2084	<i>Behr v. Hook</i> , 773 W. 122	2174-522	The instant case concerns a standardized waiver of subrogation clause in a construction contract between private parties in relatively equal bargaining positions. The clause requires the subcontractor to waive its subrogation rights to recover from the insurer for any loss or damage to the extent each party is covered by insurance. By shifting the risk of loss to the insurance company regardless of which party is at fault, these clauses seek to avoid the prospect of extended litigation which would interfere with construction.	Standardized waiver-of-subrogation clause in a construction contract between private parties in relatively equal bargaining positions is not enforceable. Subcontractor's duty to waive its subrogation rights to recover from the insurer for any loss or damage to the extent each party is covered by insurance, if any, and must insure fairness and protection for them?	Are waiver-of-subrogation clauses intended to allow the parties to escape out on other from personal liability?	Subrogation - Memo # 22.06 - C - 30.docx	POS5-003304088-POS5-003304089	Condensed, SA	0.53	839 0	15,344 0	14,873 0	21,876 1	9,079
2085	<i>Smith v. H.C. Bailey Companies</i> , 477 So. 2d 224	3074-501	The trial court's decision in disposition of a motion for voluntary dismissal was based on the fact that the subcontractor was not the insurer, and therefore, if any, and must insure fairness and protection for them generally, if any, and must insure fairness and protection for them? other than prospect of another lawsuit. Rules Civ.Proc., Rule 41(b).	Trial court's decision on motion for voluntary dismissal must consider whether the subcontractor is the insurer, if any, and must insure fairness and protection for them generally, if any, and must insure fairness and protection for them? other than prospect of another lawsuit. Rules Civ.Proc., Rule 41(b).	"Should a trial court's decision on a motion for voluntary dismissal be based on the fact that the subcontractor was not the insurer, if any, and must insure fairness and protection for them?"	Partial Procedure - 11.250 - C - 71.docx	POS5-003314572-POS5-003314573	Condensed, Order, SA	0.4	1	1	0	1	1
2086	<i>Yurch v. Mayfield</i> , 69 Ohio App. 3d 229	4134-1	The purpose of Ohio workers' compensation system is to provide compensation to [workers] and their dependents, for death, injuries, or occupational diseases, occasioned in the course of such [workers] employment. . . . [I]f Section 35, Article I, Constitution, See, also, Ruddy v. Indus. Comm. (1990), 153 Ohio St.475, 41 O.O. 486, 92 N.E.2d 673, paragraph one of the syllabus. The system does not make employees the absolute insurers of their employees' safety. Phelps v. Positive Action Tool Co. (1986), 26 Ohio St.3d 142, 26 Ohio St.2d 497 N.E.2d 969. Rather, the system is designed to protect employees from the consequences of work-related injuries. Id. at 142, 26 Ohio St.2d 497 N.E.2d at 969. To the end, workers' compensation legislation is to be "liberally construed in favor of employees and the dependents of deceased employees." R.C. 4123.95.	Ohio workers' compensation system does not make employer absolute insurers of their employees' safety; rather, system is meant to protect employees against potentially devastating consequences of work-related injuries. Cont. Art. 2, S.35.	"Does the workers' compensation system make employer absolute insurers of their employees' safety, or is the system meant to protect employees against the potentially devastating consequences of work-related injuries?"	047733.docx	LEGALASE-00128741-LEGALASE-00128743	Condensed, SA, Sub 0.73	0.73	0	1	1	1	1
2087	<i>Phelps v. Positive Action Tool Co.</i> , 26 Ohio St. 3d 142	4134-1	The purpose of the Workers' Compensation Act is not to make an employer an absolute insurer of its employees' safety, but only to protect employees against the consequences of work-related injuries. The purpose of the Act is to provide compensation to employees and their dependents in the event of a work-related injury or death. The Act is to be construed liberally in favor of employees and their dependents. See Hahnemann Hospital, supra, at 771.	Purpose of Workers' Compensation Act is not to make employer absolute insurer of employees' safety, but only to protect employees against the consequences of work-related injuries. The purpose of the Act is to provide compensation to employees and their dependents in the event of a work-related injury or death. The Act is to be construed liberally in favor of employees and their dependents. See Hahnemann Hospital, supra, at 771.	"Is the purpose of the workers' compensation act to make an employer an absolute insurer of its employees' safety, or is the system meant to protect employees against the potentially devastating consequences of this work?"	047748.docx	LEGALASE-00128756-LEGALASE-00128757	Condensed, SA, Sub 0.84	0.84	0	1	1	1	1
2088	<i>Zundell v. Duke Civ. Sch. Bd.</i> , 636 So. 2d 8	4134-1	Workers' compensation is an administrative remedy designed to speed an employee's compensation while insulating both employer and employee from the costs and delays inherent in purely judicial adversarial proceedings. Proceeding obviously will be speeded if the burden is shifted to the employer. In other words, must first show entitlement by submitting to appropriate medical examination. This process will help leave worker's compensation dockets unburdened by spurious claims while speeding compensation for sound claims. Moreover, requiring a claimant to produce the necessary medical evidence will lessen the desire of some employees to engage in the more intrusive practice of pretesting workers for preexisting conditions, to the extent permitted by law.	Workers' compensation is administrative remedy designed to speed an employee's compensation while insulating both employer and employee from costs and delays inherent in purely judicial adversarial proceedings.	Is workers' compensation an administrative remedy designed to speed the employee's compensation while insulating both the employer and employee from costs and delays inherent in purely judicial adversarial proceedings?	048542.docx	LEGALASE-00128700-LEGALASE-00128702	Condensed, SA	0.75	0	1	0	1	

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2089	Meadows Indem. Co. v. Bacala & Shop Ins. Co., 1036 F.2d 1036	251+139	The next question is whether Meadows' fraud claim falls within the scope of the arbitration agreement. While parties may not be compelled to arbitrate unless they have contracted to do so, federal policy requires courts to enforce arbitration agreements unless there is some reason to doubt the validity of the arbitration clause. The court must first determine if any doubts concerning scope of arbitrable issues should be resolved in favor of arbitration.	While parties may not be compelled to submit commercial disputes to arbitration unless they have contracted to do so, federal policy requires courts to enforce arbitration agreements unless there is some reason to doubt the validity of the arbitration clause. The court must first determine if any doubts concerning scope of arbitrable issues should be resolved in favor of arbitration.	007304.docx	LEGALASE-00129043 LEGALASE-00129044	Condensed SA	0.65	839 0	15,344 1	14,873 0	21,876 1	9,079
2090	Holiday Queen Land Corp. v. Baker, 488 F.2d 1031	1700+1693	As we noted in Durham v. Florida East Coast Ry. Co., 385 F.2d 366 (5th Cir. 1967), a court exercising its discretion in considering a motion for voluntary dismissal must follow the traditional principle that dismissal should be allowed unless the defendant will suffer some plain prejudice other than the mere prospect of a second lawsuit. It is no bar to dismissal that a plaintiff may obtain some tactical advantage thereby. 385 F.2d at 368 (quoting <i>Wells & Wells Legal Practice and Procedure</i> 791 (1965)). In <i>Wells & Wells</i> , the court granted a voluntary dismissal, NA found only the annoyance of a second litigation upon the same subject matter. Despite INA's insistence that a second suit would be only a perpetuation of the frivolous and spurious, we conclude that INA would not have lost any substantial right by the dismissal.	A court exercising its discretion in considering a motion for voluntary dismissal must follow the traditional principle that dismissal should be allowed unless the defendant will suffer some plain prejudice other than the mere prospect of a second lawsuit; and it is not a bar that plaintiff may obtain some tactical advantage thereby. Fed.Rules Civ.Proc. rule 41(a)(2), 28 U.S.C.A.	024009.docx	LEGALASE-00129496 LEGALASE-00129497	Condensed SA, Sub	0.57	0 1	1 1	1 1	1 1	1
2091	Georgiades v. Di Ferrante, 873 F.2d 878	307A+508	A plaintiff has an absolute and unqualified right to take a nonsuit upon timely motion so long as the defendant has not made a claim for affirmative relief. General Land Office v. OXY U.S.A., Inc., 289 S.W.2d 569 (570 Tex.1990). A defensive pleading states an affirmative right to relief if it alleges that the defendant has a cause of action that is independent of the plaintiff's claim, and upon which he could recover benefits, compensation, or relief, even if the plaintiff abandons his own cause of action or fails to establish it. Id. at 570. A creative replying "that merely states the plaintiff's claim, and upon which he could recover benefits, compensation, or relief, even if the plaintiff abandons his own cause of action or fails to establish it" is not a defensive pleading that would deprive the plaintiff of the right to nonsuit. BHP Petroleum Co., Inc. v. Millard, 800 S.W.2d 838, 841 (Tex.1990).	Is a plaintiff's right to take a nonsuit unqualified and absolute as long as the defendant has not made a claim for affirmative relief?	024008.docx	LEGALASE-00129593 LEGALASE-00129594	Condensed SA, Sub	0.38	0 1	1 1	1 1	1 1	1
2092	New York Morg. Tr. v. Dardenhr, 116 A.D.3d 679	307A+501	In general, absent a showing of special circumstances, including prejudice to a substantial right of the defendant or other improper consequences, a motion for a voluntary discontinuance should be granted without prejudice. McKinney's C.P.R. § 32.17(c).	Is motion for voluntary discontinuance generally granted absent a showing of special circumstances which includes prejudice or other improper consequences?	026182.docx	LEGALASE-00129189 LEGALASE-00129190	SA, Sub	0.75	0 0	0 0	1 1	1 1	1

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	Es parte Goodyear v Fire & Rubber Co., 248 S.C. 412	307A+331	The proposition started in the passage from Wigmore on Evidence, quoted with approval in Weisk, supra, 211 S.C. 536, 465 L.Ed.2d 147, 175 L.R. 228, that discovery, as part of the original inherent jurisdiction of courts of equity, extended to discovery of chattels and premises in the hands of the adverse party, has the support of the overwhelming weight of authority. See, e.g., 13 A.L.R.2d 657, 4 A.L.R.3d 762. After stating the contrary or Premises, 13 A.L.R.2d 657, 4 A.L.R.3d 762. After stating the contrary rule applicable to courts of law, the annotator cites numerous cases to the proposition that, "there is agreement among the American and English courts that a court of equity has power, even absent specific statutory authorization, to order discovery and inspection of articles or premises." 4 A.L.R.3d 772. According to the annotator, the power was recognized by implication as early as 1808 in Marsden v. Parishall, 1 Vern.407, 22 Eng. Rep. 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827,											

ROW	Judicial Opinion	WMS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Option Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
2098	Jacob Hartz Seed Co. v. Thomas, 25 A.1. 176	413+1	The necessity for extreme caution in approving such settlements so clearly recognized by the commission's procedural rule lies in the fact that any award based thereon finally concludes all rights of the parties, even foreclosing any right of appeal from the order of approval. This is the only procedure under our act which leaves the claimant without any further remedy, regardless of subsequent developments. See Brooks v. Brooks, 10 A.1. 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.	The public, as bearer of ultimate burden of compensation protection, has a material interest in minimization of risk of an injured employee becoming object of public charity or public relief. AA.Stat. § 81-1319(1).	04.7830.docx	LEGALCASE-00130149-LEGALCASE-00130151	1	15,344	14,873	1	21,876	1	9029	
2099	Com. v. Fall River Motor Sales, 409 Mass. 302	307A+712.1	A continuance is appropriate if the party opposing a summary judgment motion shows that it cannot, without further discovery, present by affidavit, affidavits, facts essential to justify its opposition. "Mass.Ct.Pr. 56(f), 365 Mass. 825 (1974). See Godbout v. Guenz, 396 Mass. 262, n. 11, 485 N.E.2d 940 (1985); First Nat'l Bank v. Shale, 379 Mass. 244, 245 (1979). See generally Annot., Sufficiency of Showing, Under Rule 56(f) of Federal Rules of Civil Procedure, of Inability to Present by Affidavit Facts Material to Disposition of Summary Judgment Motion, 14 A.L.R.2d 206 (1980). One common reason for the denial of a continuance in this context is the irrelevance of further discovery to the issue being adjudicated in summary judgment. See Blake Bros., supra 12 Mass.App. at 427 N.E.2d 501; 10 A.C. Wright, A. Miller & M. Kane, Federal Practice & Procedure ¶ 2741, at 558-559 (1983 & Supp.1990); J. Smith & H. Zobel, Rule Practice ¶ 56.8, at 362 (1977 & Supp.1990). See also First Nat'l Bank v. Cities Serv. Co., 391 U.S. 253, 265 S.Ct. 375, 1360, 20 L.Ed.2d 569 (1968). It is not uncommon for the parties to stipulate to a summary judgment, for the purpose of showing facts sufficient to withstand a summary judgment motion, rather than Rule 26, which provides for broad pretrial discovery.".	Continuance is appropriate if party opposing summary judgment motion shows that it cannot, without further discovery, present by affidavit, facts essential to justify its opposition; one common reason for denial of continuance is irrelevance of further discovery to issue being adjudicated in summary judgment. Rules Civ.Proc., Rule 56(f), 438 M.G.L.A.	"Is a continuance appropriate if a party opposing summary judgment motion shows that it cannot, without further discovery, present by affidavit, facts essential to justify its opposition; one common reason for denial of continuance is irrelevance of further discovery to issue being adjudicated in summary judgment. Rules Civ.Proc., Rule 56(f), 438 M.G.L.A.	Pretrial Procedure--Memo #11680 - C-BP.docx	R05-003287700-R055-003287701	Condensed, SA, Sub 0.84	0.74	0	1	1	1	1
2100	Shaw v. Elting, 157 A.3d 142	307A+331	A party in litigation has an affirmative duty to preserve potentially relevant evidence. A court may sanction a party who "destroys" relevant evidence. The duty to preserve evidence is not limited to the parties; a party is not obligated to "preserve every shred of paper, every e-mail or electronic document, but instead must preserve what it knows, or reasonably should know, is relevant to the action, is reasonably calculated to lead to the discovery of admissible evidence, is reasonably likely to be requested during discovery and/or is the subject of a pending discovery request." "To impose monetary sanctions, [a court] need only find that a party had a duty to preserve evidence and breached that duty. That a party had a duty to preserve evidence and breached that duty. That a party had a duty to preserve evidence and breached that duty. That a party had a duty to preserve evidence and breached that duty. 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ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
	State v. Patton, 84 S.W.3d 354	1104633-319	A decision to grant or deny a continuance is within the trial court's sound discretion, and an appellate court will not interfere with the trial court's ruling unless it is manifestly erroneous. Tex. R. App. P. 84, S.W.3d 925, 930(2) (Mo.Banc. 1997). Rule 24.09 reveals that a motion for a continuance must be in writing accompanied by an affidavit setting forth the facts upon which the motion is based unless the adverse party consents to an oral motion.1 State v. Dodd, 10 S.W.3d 546, 555(26) (Mo.App.1999). When a continuance request is based upon the absence of a witness, Rule 24.10 requires the application show the materiality of the potential testimony, the particular facts the witness will prove, due diligence in procuring the witness, and the reasons why the witness is unavailable. Rule 24.10 requires the application show the materiality of the witness' testimony, the particular facts the witness will prove, due diligence in procuring the witness, and the reasons why the witness will be procured within a reasonable time. Dodd, 10 S.W.3d at 555. "Failure to comply with Rules 24.09 and 24.10 alone is sufficient to sustain the trial court's ruling." Id. at 555(27).	When a continuance request is based upon the absence of a witness, it is required that the application show the materiality of the potential testimony, the particular facts the witness will prove, due diligence on the part of the defendant to obtain the testimony, and reasonable grounds to believe the attendance or testimony of the witness will be procured within a reasonable time. V.A.M.R. 24.10.	When will the absence of a witness be grounds for a continuance?	027621.docx	LEGALISE-00132112-LEGALISE-00132113	Condensed, SA, Sub	0.62	839	1	14,873	21,876	9,079
2108	Univ. of Texas Med. Branch v. Williams, 195 S.W.3d 98	307A-4517.1	Under the Texas Rules of Civil Procedure, "[a]t any time before the trial court renders its judgment, a party may amend its pleadings in the pleadings." Tex. R. Civ. P. 162. Rule 162 applies in this case because Shultz filed the nonsuit while this matter was pending on interlocutory appeal from UTMB's pretrial plea to the jurisdiction. Under these circumstances, the nonsuit extinguishes a case or controversy from "the moment the motion is filed" or an oral motion is made in open court; the only requirement is "the mere filing of the motion with the clerk of the court." Tex. R. Civ. P. 162, cmt. d(1). See also Greenberg v. Brookshire, 640 S.W.2d 870, 872 (Tex.1998); see also Greenberg v. Brookshire, 640 S.W.2d 870, 872 (Tex.1998). While the date on which the trial court signs an order dismissing the suit is the "starting point for determining when a trial court's plenary power expires," a nonsuit is effective when it is filed. In re Bennett, 9605.W.2d 35, 38 (Tex.1997). Tex. R. Civ. P. 329b. The trial court generally has no discretion to refuse to dismiss the suit, and its order doing so is ministerial. In re Bennett, 9605.W.2d at 38; Shadowbrook, 783 S.W.2d at 211.	While the date on which the trial court signs an order dismissing the suit is the starting point for determining when a trial court's plenary power expires, a nonsuit is effective when it is filed. Vernon's Ann. Texas Rules Civ.Proc., Rules 162, 329b.	When is the date on which the trial court signs an order dismissing the suit effective when a trial court's plenary power expires, is a nonsuit effective when it is filed?	Pretrial Procedure - 027757.docx	ROSS-0030030015-ROSS-003360010	SA, Sub	0.8	0	0	1	1	1
2109	Morgan Stanley Dean Witter Commercial Fin. Servs. v. Schulz, 185 Ohio App. 3d 152	307A-4517.1	Relators argue that the filing of the notice of voluntary dismissal by Marks counted against respondent's jurisdiction to proceed in case No. CV-502459. "When a case has been properly voluntarily dismissed pursuant to Civ.R. 41(A)(1), the trial court patently and unambiguously lacks jurisdiction to proceed, and a writ of prohibition will issue to prevent the exercise of jurisdiction. Rules 41(A)(1)."	When a case has been properly voluntarily dismissed, the trial court patently and unambiguously lacks jurisdiction to proceed, and a writ of prohibition will issue to prevent the exercise of jurisdiction. Rules Civ.Proc., Rule 41(A)(1).	"When a case has been properly voluntarily dismissed, does the trial court patently and unambiguously lack jurisdiction to proceed, and a writ of prohibition will issue to prevent the exercise of jurisdiction?"	027757.docx	LEGALISE-00132023-LEGALISE-00132024	Order, SA	0.68	1	0	0	1	
2110	Joachim v. Travelers Ins. Co., 279 S.W.3d 812	307A-4517.1	A nonsuit extinguishes a case or controversy the moment it is filed with the trial court. See, e.g., Albu'Abid, 785 S.W.2d 210, 211 (Tex.1990). While the date a trial court signs an order dismissing the suit is the "starting point for determining when a trial court's plenary power expires," a nonsuit is effective when filed. In re Bennett, 9605.W.2d 35, 38 (Tex.1997). Under rule 162, a trial court retains authority after a nonsuit is filed and during the period of its plenary power to consider costs, attorney's fees and sanctions, matters "collateral" to the merits. Univ. of Tex. Med. Branch at Galveston v. Estate of Brown, 125 S.W.3d 936, 101 (Tex.2006). In re Bennett, 9605.W.2d at 38. But in Albu'Abid, 785 S.W.2d at 210, the court stated that a nonsuit "is a final, unreviewable act." S.W.2d at 38; Hooks v. Fourth Court of Appeals, 808 S.W.2d 56, 59 (Tex.1991) (party requesting a nonsuit has absolute right to nonsuit at moment notice is timely filed); Greenberg v. Brookshire, 640 S.W.2d 870, 872 (Tex.1998) (granting nonsuit is merely a ministerial act). Here, at the time Joachim filed a nonsuit in cause number 995207018, Travelers did not have on file a claim for affirmative relief, attorney's fees, or sanctions. The trial court was not empowered to adjudicate the merits of Joachim's claim after he filed a nonsuit.	While the date a trial court signs an order dismissing the suit is the starting point for determining when a trial court's plenary power expires, a nonsuit is effective when filed? Vernon's Ann. Texas Rules Civ.Proc., Rule 162.	When is the date a trial court signs an order dismissing the suit effective when a trial court's plenary power expires, is a nonsuit effective when filed?	027862.docx	LEGALISE-00132260-LEGALISE-00132261	SA, Sub	0.83	0	0	1	1	
2111	In re Carolina Tobacco Co., 360 B.R. 702	371+2001	The term "tax" is not defined in the Bankruptcy Code, but courts are to apply a four-part test. A tax is (1) an involuntary pecuniary burden, regardless of name, laid upon individuals or property; (2) imposed by or under authority of the legislature; (3) for public purposes, including the expenses of government or undertakings authorized by it; and (4) under the police or taxing power of the state. In re Lorber Indus. of Cal., Inc., 675 F.2d 1002, 1066 (9th Cir.1982).	"Tax" is: (1) involuntary pecuniary burden, regardless of name, laid upon individuals or property; (2) imposed by or under authority of the legislature; (3) for public purposes, including purpose of defraying expenses of government or undertakings authorized by it; and (4) under the police or taxing power of the state.	"% tax for public purposes, including purpose of defraying expenses of government or undertakings authorized by it?"	044802.docx	LEGALISE-00131511-LEGALISE-00131513	Condensed, SA	0.35	0	1	0	1	
2112														

ROW	Judicial Opinion	WIMS Topic - Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences	
2113	Mayor & City Council of Baltimore v. Vonage Am. Inc., 544 F. Supp. 2d 458	1708+1036	Because the TA "represents a recognition that states are best situated to administer their own fiscal operations," the term "tax" is subject to a "broader interpretation when reviewed under this axis of the TA." Valero Terminals Corp. v. Caffrey, 201 F.3d 130, 133-34 (4th Cir.2000) ("[t]he Supreme Court has consistently interpreted the term "tax" broadly, and the term "tax" must analyze whether the charge is for revenue raising purposes (making it a "tax"), or for regulatory or punitive purposes (making it a "fee")." Id. at 134. The Fourth Circuit considers three factors in this analysis: (1) what entity imposes the charge; (2) what population is subject to the charge; and (3) what purposes are served by the use of the monies obtained by the charge. Id. As Valero has explained, the "classic tax" is "imposed by the legislature upon all large segment of the population, and the revenue is used to fund the government's general operations." Id. at 134. The "classic fee" is "imposed by an administrative agency upon only those persons or entities, subject to its regulation for regulatory purposes, or to raise money placed in a special fund to defray the agency's regulation-related expenses." Id. (internal quotation marks omitted).	Under the Tax Function Act (TFA), the "classic tax" is imposed by the legislature upon a large segment of society, and is spent to benefit the community at large, while the "classic fee" is imposed by an administrative agency upon only those persons, or entities, subject to its regulation for regulatory purposes, or to raise money placed in a special fund to defray the agency's regulation-related expenses. 28 U.S.C.A. § 1341.	Who is classic tax imposed upon?	Taxation - Memo of 300 - C - Ck.docx	ROSS-003331039-ROSS-003331040	SA, Sub	0.65	839	15_344	14,873	21,876	9,029	
2114	United States v. Mendez, 337 F. Supp. 3d 709	63+111	Under the stream of benefit doctrine, bribery is "a paid act and requirement is satisfied so long as the evidence shows a course of conduct of favors and gifts flowing to a public official in exchange for a pattern of official actions favorable to the donor." United States v. Kemp, 500 F.3d 257, 282 [3d Cir. 2007] (internal citations and quotations omitted), emphasis in original). "[p]ayments may be made with the intent to retain the official's services on an "as-needed" basis, so that whenever the opportunity presents itself the official will take specific action on the payment's behalf." Id. at 282. "[I]n such cases, the payments are made to specific officials, and the timing of these acts in relation to the alleged bribes is clear from the face of the indictment. Defendants assert that "the incorporation of 157 "acts" into each of ten separate bribery counts ... only magnifies the insufficiency of the indictment." Mot. to Dismiss 7 at 11. But these various acts together show a "pattern of official actions" that the government alleges as evidence of the "quo" that Defendants intended to result from the alleged bribes. Kemp, 500 F.3d at 1282. Taking into account the timing of the payments, the nature of the payments, and the many officials alleged in the indictment serve as circumstantial evidence that Melgen's payments were made and accepted with the intent to retain Mendez's services on an as-needed basis. This provides more than sufficient factual orientation for the charges of bribery in Counts Two through Eight, the charges of honest services fraud in Counts Nineteen through Twenty One, and the conspiracy to commit bribery charged in Count One.	Under the stream of benefit doctrine, the bribery defendant paid upon quo requirement is satisfied so long as the evidence shows a course of conduct of favors and gifts flowing to a public official in exchange for a pattern of official actions favorable to the donor. 18 U.S.C.A. § 201.	How is bribery's valid quo requirement satisfied under the stream of benefits doctrine?	Bribery - Memo 824 - C - Lb.docx	ROSS-003300518-ROSS-003300629	Confidential, SA	0.83	0	1	0	1	1	
2115	State v. Sherwin, 127 N.J. Super. 370	63+111	The necessary corrupt intent is supplied simply by showing that the opportunity was used to perform a public duty as a means of acquiring an unlawful benefit. State v. Beggs, 31 N.J. 3, 46, 187 A.2d 161 (1961). Whether the benefit was received personally by defendant is immaterial; see State v. Sinigaglia, 38 N.J. Super. 187, 120 A.2d 621 (App.Div. 1956), and State v. Berman, 38 N.J. Super. 197, 120 A.2d 621 (App.Div. 1956), and it does not require that the person receiving the bribe do so "under color of his office," as does the section proscribing statutory extortion. N.J.S.A. 2A:105-1. The offense of receiving a bribe under N.J.S.A. 2A:9B-6 is complete upon a showing that defendant received a thing of value as a bribe to procure any act appertaining to any office or department of the government.	Corrupt intent necessary to bribery conviction is supplied simply by showing that opportunity was used to perform a public duty as a means of acquiring unlawful benefit. N.J.S.A. 2A:85-1, 2A:93-6.	Is the corrupt intent necessary to bribery conviction supplied simply by showing that opportunity was used to perform a public duty as a means of acquiring unlawful benefit?	Bribery - Memo 825 - C - CSS.docx	ROSS-003287188-ROSS-003287189	SA, Sub	0.77	0	0	1	1	1	
2116	Whelan v. Green, 157 S.W.3d 439	228+183	Undue prejudice depends on whether withdrawing an admission or filing a late response will delay trial or significantly hamper the opposing party's ability to prepare for it. Carpenter, 98 S.W.3d at 687; Stealy, 927 S.W.2d at 622; see also Wal-Mart Stores, Inc. v. Duggs, 968 S.W.2d 354, 357 (Tex.1998) (per curiam) (finding no undue prejudice from withdrawing store managers' deemed admissions as plaintiff had already introduced evidence in support of its claims and defendant had waited six months before the summary judgment motion was heard. The lower courts could not have concluded on this record that Darrin would suffer any undue prejudice if the admissions were withdrawn.	Undue prejudice, as element for withdrawing deemed admissions or for allowing a late summary judgment response, depends on whether withdrawing an admission or filing a late response will delay trial or significantly hamper the opposing party's ability to prepare for it. Vernon's Ann.Texas Rules Civ.Proc., Rules 166a(c), 198.3.	Does undue prejudice depend on whether withdrawing a deemed admission will delay the trial or significantly hamper the opposing party's ability to prepare for it?	0.8179.docx	LEGALCASE-00132984-LEGALCASE-00132989	SA, Sub	0.56	0	0	1	1	1	
2117	In re Estate of Kloss, 8 S.W.3d 866	307A+S17.1	A trial court loses jurisdiction when a plaintiff voluntarily dismisses a case, and the plaintiff seeks to relitigate the same case. A trial court may take no further action as to the dismissed action and any step attempted is a nullity. P.R. v. R.S., 950 S.W.2d 255, 256 (Mo.App.1997). See also Norris v. Johnson, 599 S.W.2d 90, 91 (Mo.App.1980). "Once a plaintiff voluntarily dismisses a claim prior to the introduction of evidence, "it is as if the suit were never brought." = Curators of University of Missouri v. St. Charles County, 985 S.W.2d 810, 814 (Mo.App.1998).	Trial court loses jurisdiction when a plaintiff voluntarily dismisses a case, and the plaintiff seeks to relitigate the same case. A trial court may take no further action as to the dismissed action and any step attempted is a nullity.	"Does a trial court lose jurisdiction when a plaintiff voluntarily dismisses a case, and the plaintiff seeks to relitigate the same case? introduction of evidence?"	Petrial Procedure - 002288000 - P.256 - C - EEdon	ROSS-003288099-ROSS-002288000	Confidential, SA	0.58	0	1	0	1	1	
2118	Escobar et al. Escobar v. King City, Pub. Hosp. Dist. No. 2, 117 Wash. App. 483	307A+S17.1	307A+S17.1 dismissal of an action under CR 41(a), a trial court retains jurisdiction to consider the defendant's motion for expenses if the motion is made pursuant to a statute or a contractual provision. Whether or not to award the expenses following a voluntary nonsuit is within the discretion of the trial court, in light of the facts and circumstances of the entire case. The same standard is used when reviewing sanctions imposed under CR 11 and RCW 4.54.185.	"After the voluntary dismissal of an action, does a trial court retain jurisdiction to consider the defendant's motion for expenses if the motion is made pursuant to a statute or a contractual provision?"	0.8573.docx	LEGALCASE-00132720-LEGALCASE-00132721	0	Order, SA	0.56	1	0	0	1		

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
2119	Thor Industries v. Indiana Dept. of State Revenue, 60 N.E.3d 308	307A+486	In instances like these, where a litigant's use of Trial Rule 36(b) contravenes the Rule's important purpose of more quickly and efficiently reaching a resolution based on the actual facts, the Court may withdraw the admissions when the presentation of the merits will be subverted and the party benefiting from them is not prejudiced. See, e.g., id. at 353-54. Indeed, Trial Rule 36(b) "is not intended to provide a windfall to litigants nor is it to be used as a "gotcha device" or "as a trap to prevent the presentation of the truth in full hearings[]" " Instead, it is to be used "as a tool for the fair disposition of litigation with a minimum of delay." See id. at 354 (citations omitted). Accordingly, and in keeping with this Court's long-standing policy of deciding cases on their merits, the Court GRANTS Thor's Motion. Consistent with the Court's Order of August 26, 2016, the Department shall file a Notice regarding its intent to maintain or withdraw its Motion for Summary Judgment on or before September 30, 2016. Thereafter, the Court will direct the parties regarding all remaining matters by separate cover.	Where a litigant's use of rule governing deemed admissions contravenes the rule's important purpose of more quickly and efficiently reaching a resolution based on the actual facts, the court may withdraw the admissions when the presentation of the merits will be subverted and the party benefiting from them is not prejudiced. Trial Procedure Rule 36(b).	Can a court withdraw the admissions when the presentation of the merits will be subverted and the party benefiting from them is not prejudiced?	Pretial Procedure - Memo # 2827 - C- SB.docx	ROSS-003301841-R055-003301842	SA, Sub	0.69	8390	15,9440	14,8731	21,8761	9,029
	Flamm v. Hughes, 329 F.2d 378	413+1	Congress enjoys great latitude in promulgating a statutory scheme for the compensation of workers who may suffer a broad range of injuries in terms of duration and severity. That one may receive greater compensation in certain circumstances for temporary disability than for permanent disability does not lead to the conclusion that the statutory scheme is irrational, for one may not equate the duration of an injury with its severity. Nor is it irrational for Congress to provide a specific schedule of compensation limited to a prescribed number of weeks for nonfatal permanent disabilities and for permanent compensation for nonfatal permanent disabilities for all other workers. The present partial disability. Thus it is of no constitutional significance that Mr. Flamm's compensation award, cut short by his death, would have been greater if the injuries leading to his disability had been among those enumerated in "508(c).	Congress has great latitude in promulgating a statutory scheme for compensation of workers who may suffer broad range of injuries in terms of duration and severity. Longshoremen's and Harbor Workers' Compensation Act, 5 86(c), 33 U.S.C.A. 5 908(c).	Does Congress have great latitude in promulgating the statutory scheme for compensation of workers who may suffer a broad range of injuries in terms of duration and severity?	047877.docx	LEGALASE-0013258-LEGALASE-0013259	SA, Sub	0.74	0	0	1	1	
2121	Jeffery v. United States, 450 F.3d 342	34+4	As we have previously recognized, "[t]he National Guard is the successor to the militia of the United States, and thus is deeply bedeviled by the feature of our national defense system." Singleton v. Meiri Sea, Prot. Bd., 244 F.3d 1331, 1333 (Fed.Cir.2001). The National Guard is a "hybrid" component of the United States armed forces in that it performs both federal and state functions. Id. During times of national emergencies, the President may mobilize the National Guard, putting it in federal duty status and making its members available for military duties normally assigned to the active armed forces and armed forces reserves. During non-emergency times, the National Guard is led by the state adjutants general. The state adjutants general answer to the governors of their respective states, who in turn, have the authority to call upon members of the National Guard in times of domestic emergencies or need.	During times of national emergencies, the President may mobilize the National Guard, putting it in federal duty status and making its members available for military duties normally assigned to the active armed forces and armed forces reserves.	Can the president mobilize the National Guard putting it in federal duty status and making its members available for military duties?	003896.docx	LEGALASE-00133794-LEGALASE-00133795	Condensed, SA	0.74	0	1	0	1	
	Tommy Gio v. Durip, 348 S.W.3d 503	307A+486	Under rule of civil procedure 158.3(b), a trial court may permit a party to withdraw or amend an admission if the party shows good cause for the withdrawal or amendment. Text, Civ. P. 158.3(b). "Good cause is established by showing the failure involved was an accident or mistake, not intentional or the result of conscious indifference." Wheeler v. Green, 157 S.W.3d 439, 442 (Tex.2005) (per curiam). In addition to finding good cause for withdrawal of an admission, the trial court may permit a party to withdraw an admission only if the court finds that the party relying on the deemed admissions will not be unduly prejudiced, and that the presentation of the merits of the action will be served by permitting the withdrawal of the admission.	"Good cause" for withdrawal or amendment of a deemed admissions is established by showing the failure involved was an accident or mistake, not intentional or the result of conscious indifference. Vernon's Ann. Texas Rules Civ.Proc., Rule 158.3(b).	Is good cause supporting withdrawal of a deemed admission established by showing that the failure involved was an accident or mistake, not intentional or the result of conscious indifference?	028453.docx	LEGALASE-00134438-LEGALASE-00134439	Condensed, SA, Sub	0.66	0	1	1	1	1
2123	Stelly v. Papania, 327 S.W.2d 620	307A+486	We consider whether a trial court abuses its discretion by allowing a party to withdraw and amend its original answers to a request for admissions. We hold that a trial court does not abuse its discretion when the moving party shows: (1) good cause; (2) that the party relying on the responses will not be unduly prejudiced; and (3) that the withdrawal will serve the purpose of legitimate discovery and the merits of the case. See, e.g., In re: [redacted], 2015 WL 1000000 (Tex. App. [redacted] 2015) and remand the case to that court to determine the merits of the appeal.	Trial court does not abuse its discretion by allowing a party to withdraw an admission if moving party shows that there is good cause, that party relying on the responses will not be unduly prejudiced, and that the withdrawal will serve purpose of legitimate discovery and the merits of case. Vernon's Ann. Texas Rules Civ.Proc., Rule 169, Subd. 2.	Does a trial court have discretion to permit a party to withdraw an admission if the party shows good cause, and if the trial court finds that the party relying on the admission will not be unduly prejudiced?	028693.docx	LEGALASE-00134021-LEGALASE-00134022	Condensed, SA, Sub	0.3	0	1	1	1	1
	Indep. Tr. Corp. v. Stan Miller, 799 P.2d 483	307A+749.1	Pretial conferences and orders are tools for simplifying the issues with an eye toward ultimately resolving lawsuits on the merits, not methods for avoiding trials altogether. See Padovani v. Bruchhausen, 293 F.2d 946, 948 (2d Cir. 1961); Gilson v. Kurth, 133 Colo. 102, 108, 384 P.2d 946, 949 (1963). The rule governing summary judgment is Rule 56 and the purpose of the rule is to avoid trials altogether. See, e.g., In re: [redacted], 2015 WL 1000000 (Tex. App. [redacted] 2015) and remand the case to that court to determine the merits of the appeal.	Pretial conferences and orders are tools for simplifying issues with an eye toward ultimately resolving lawsuits on the merits, not methods for avoiding trials altogether.	Are pretial conferences and orders tools for simplifying issues with an eye toward ultimately resolving lawsuits on the merits, not methods for avoiding trials altogether?	Pretial Procedure - Memo # 2888 - C- AP.docx	ROSS-00337340-R055-003317941	Condensed, SA	0.78	0	1	0	1	
2124														

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Between Opinion and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
2125	Batchelor v. State Farm Mut. Auto. Ins. Co., 240 Ga. App. 366	307A+481	It is true that unlike an "evidentiary admission," which may be contradicted, a judicial admission is not subject to rebuttal by the trial court. But the question presented here is whether such admissions by one defendant are binding on another defendant. OCGA "24-3-31(2), which is part of the Evidence Title of the Georgia Code, provides: The admission by a party to the record shall be admissible in evidence when offered by the other side, except in the following cases: ... admissions of one of several parties without joint interest, unless the issue is of such character that the effect of the admission can be confined to the one party." OCGA "24-3-31(2) provides that a judicial admission is binding on another party where the interests of the two are joint but not where their interests are adverse.3 Inasmuch as the interests of Batchelor and Glenn are adverse, the judicial admissions of the latter are not binding on the former under OCGA "24-3-31(2).	Unlike an evidentiary admission, which may be contradicted, facts admitted via requests for admission are "judicial admissions" which are not subject to rebuttal and are binding on the party making them unless withdrawn. 16 A.R.S. Rules 11-3-34(b).	"Unlike an evidentiary admission, which may be contradicted, facts admitted via requests for admission are "judicial admissions" which are not subject to rebuttal and are binding on the party making them unless withdrawn. 16 A.R.S. Rules 11-3-34(b).	ROSS-00291693-ROSS-00291670	SA, Sub	0.8	839	0	15,344	14,873	21,876	9,079
2126	DeLong v. Merrill, 233 Ark. 163	307A+486	Even when both principles are not, however, Rule 36, Fed.R.C.P., "in amendment, not mandatory," in that the court may allow withdrawal or amendment of an admission, but it is not required to do so. Cotton, 474 F.3d at 621, 8, 24 "75. Trial courts may consider other factors, including whether there was good cause for the delay and the merits of the moving party's case. Id. at 625. Good cause is established by a showing that the failure to respond to the requests for admission "was an accident or mistake, not intentional or the result of conscious indifference." "Salazar v. Wheeler, 853 F.3d 919, 919 (10th Cir. 2017) (en banc) (quoting Wheeler v. Green, 157 S.W.3d 439, 443 (Tex.2005)). " Even a slight excuse will suffice, especially when delay or prejudice to the opposing party will not result." "Id., quoting Boulet v. State, 189 S.W.3d 833, 836 (Tex.App.2006). Misplaced documents have qualified as good cause where there is no conscious indifference and failure to respond was due to a clerical error. Id.	"Good cause" is established by a showing that the failure to respond to the requests for admission was an accident or mistake, not intentional or the result of conscious indifference, even a slight excuse will suffice, especially when delay or prejudice to the opposing party will not result from the withdrawal or amendment of the admission. 16 A.R.S. Rules Civ.Proc. Rule 36(c).	"Will even a slight excuse suffice, to establish good cause justifying the withdrawal or amendment of an admission, especially when delay or prejudice to the opposing party will not result?"	020601.docx	LEGALASE-0013479-LEGALASE-00134380	Condensed SA, Sub	0.65	0	1	1	1	1
2127	Wheeler v. Green, 157 S.W.3d 439	307A+486	We recognize that trial courts have broad discretion to permit or deny withdrawal of deemed admissions, but they cannot do so arbitrarily, unreasonably, or without reference to guiding rules or principles. Stelly, 927 S.W.2d at 622. While requests for admissions were at one time unique in including an automatic sanction for untimely responses, failure to comply with any discovery requests now bears similar consequences. See Tex. Civ. P. 192.3(c). Nevertheless, we have held for all other forms of discovery that the failure to respond to a request for discovery is governed by the rules, due process bars preclusive sanctions, and have applied this rule to: " depositions, see TransAmerican Natural Gas Corp. v. Powell, 811 S.W.2d 913, 918-19 (Tex.1991); " interrogatories, see Chrysler Corp. v. Blackmon, 841 S.W.2d 844, 846, 850 (Tex.1992); " requests for production, see id. at 849-50; QTC Communications Sys. Corp. v. Tanner, 856 S.W.2d 725, 729-30 (Tex.1993); and " requests for disclosure, see Spohn Hosp. v. Mayer, 104 S.W.3d 879, 881 (Tex.2003) (per curiam).	While trial courts have broad discretion to permit or deny withdrawal of deemed admissions, they cannot do so arbitrarily, unreasonably, or without reference to guiding rules or principles. Vernon's Ann. Texas Rules Civ.Proc. Rule 198.3.	"While trial courts have broad discretion to permit or deny withdrawal of deemed admissions, they cannot do so arbitrarily, unreasonably, or without reference to guiding rules or principles or Civ.Proc. Rule 198.3."	Perital Procedure - Memo # 3184 - C - SJ.docx	ROSS-00291676-ROSS-00291678	SA, Sub	0.78	0	0	1	1	1
2128	Morton Salt Co. v. City of S. Hutchinson, 159 F.2d 897	371+1-2001	The authorities sometimes draw a distinction between a general ad valorem tax levied for the general welfare of the whole community, and a tax in the form of an assessment to finance special improvements designed to benefit the property located within the particular taxing district. And it may be said that the cases wherein the courts have affirmed the power of imposing local taxes for the benefit of special districts are in the main, if not exclusively, cases involving a taxing jurisdiction. See Mullin v. City of Perry, 101 U.S. 318, 325. But whether a tax is so arbitrary, unequal and discriminatory as to deny due process, does not depend upon its legislative definition, form or label. Wisconsin v. J. C. Perry Co., supra. Every burden which the state imposes upon its citizens with the view of revenue for support of its government or any of its political subdivisions, is levied under the power of taxation, whether under the name of a tax or some other designation. Cooley Constitutional Limitations, 8th Ed., p. 1050.	Is every burden which the state imposes upon its citizens with the view of revenue for support of its government or any of its political subdivisions is levied under the power of taxation whether under the name of a tax or some other designation.	Is every burden that the state imposes upon its citizens with the view of revenue for support of its government levied under the power of taxation?	045067.docx	LEGALASE-0013479-LEGALASE-00134182	Condensed SA	0.77	0	1	0	1	1
2129	Collett v. Cordova, 290 Va. 139	386+1-0	[T]o recover for trespass to land, a plaintiff must prove an invasion that interfered with the right of exclusive possession of the land, and that was a direct result of some act committed by the defendant. Any physical entry upon the surface of the land constitutes such an invasion, whether the entry is a walking upon it, flooding it with water, casting objects upon it, or otherwise.	To recover for trespass to land, a plaintiff must prove an invasion that interfered with the right of exclusive possession of the land, and that was a direct result of some act committed by the defendant. Any physical entry upon the surface of the land constitutes such an invasion, whether the entry is a walking upon it, flooding it with water, casting objects upon it, or otherwise.	How can a plaintiff recover for trespass to land?	047388.docx	LEGALASE-0013479-LEGALASE-00134788	SA, Sub	0.01	0	0	1	1	1

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2130	Gulf Guar. Life Ins. Co. v. Connecticut Gen. Life Ins. Co., 304 F.2d 476	251+152	9 U.S.C. * 4 (1939). The FAA does not provide therefore for any court intervention prior to issuance of an arbitral award and beyond the enforcement of that agreement by compelled arbitration of claims that fall within the scope of the agreement even after the court determines some default has occurred. Moreover, enforcement of an agreement to arbitrate under the FAA does not appear to include any mechanism beyond those geared toward returning the parties to arbitration, thus appearing not to authorize compensation by a court to parties in the form of damages prior to issuance of an arbitral award. Cf. <i>Adams v. City of Los Angeles</i> , 2015 WL 1000000 (C.D. Cal. 2/19/15), <i>aff'd</i> , 2015 WL 1000000 (C.D. Cal. 2/19/15), <i>aff'd</i> , 765 (1982) [The FAA provides two parallel devices for enforcing an arbitration agreement: a stay of litigation in any case raising a dispute referable to arbitration, 9 U.S.C. * 3, and an affirmative order to engage in arbitration, * 4. Both of these sections call for an expeditious and summary hearing, with only restricted inquiry into factual issues. ¹]	Federal Arbitration Act (FAA) does not provide for any court intervention prior to issuance of an arbitral award, even after court determines that some arbitrate exists and enforcement of that agreement by compelled arbitration of claims falling within scope of agreement. 9 U.S.C.A. § 1 et seq.	Does Federal Arbitration Act (FAA) provide for any court intervention prior to issuance of an arbitral award?	007564.docx	LEGALCASE-00135856-LEGALCASE-00135858	SA, Sub	0.68	839	15,344	14,873	21,876	9,029
	14 Penn. Plaza LLC v. Peltz, 558 U.S. 247	251+153	The Court was correct in concluding that federal anti-discrimination rights may not be prospectively waived, see 29 U.S.C. * 526(b)(1)(C); see, supra, at 1405, but it confused an agreement to arbitrate those statutory claims with a prospective waiver of the substantive right. The decision to resolve ADEA claims by way of arbitration instead of litigation does not waive the statutory right to be free from workplace age discrimination; it waives only the right to seek relief from a court in the first instance. Age Discrimination in Employment Act of 1967, § 2 et seq., 29 U.S.C.A. § 621 et seq.	The decision to resolve ADEA claims by way of arbitration instead of litigation does not waive the statutory right to be free from workplace age discrimination; it waives only the right to seek relief from a court in the first instance. Age Discrimination in Employment Act of 1967, § 2 et seq., 29 U.S.C.A. § 621 et seq.	Does the decision to resolve Age Discrimination in Employment Act claims by way of arbitration waive the statutory right?	007571.docx	LEGALCASE-00135382-LEGALCASE-00135383	SA, Sub	0.78	0	0	1	1	
2131			judicial forum.” (quoting Mitsubishi Motors Corp., 473 U.S. at 628, 105 S.Ct. 3346). This “Court has been quite specific in holding that arbitration agreements can be enforced under the FAA without contravening the policies of congressional enactments giving employees specific protection against discrimination prohibited by federal law.” Circuit City Stores, Inc., 532 U.S. at 123, 123 S.Ct. 1302. The suggestion in Gardner Denver that the decision to arbitrate statutory discrimination claims was tantamount to a prospective waiver of the right to seek relief from a court is based on an understanding of the compromise made when an employee agrees to compulsory arbitration.											
2132	Cardiff Equities v. Superior Court, 186 Cal. App. 4th 1541	307A+517.1	“A dismissal ‘without prejudice’ necessarily means without prejudice to the filing of a new or amended complaint, and thus is not a final judgment within the meaning of the nonprospective statute of limitations.” [Citations.]” (Eaton Hydraulic Inc. v. Continental Casualty Co. (2005) 32 Cal.App.4th 966, 974-975, fn. 6, 34 Cal.Rptr.3d 91.). Thus, subject to the statute of limitations, Cardiff had the right to file a new action eliminating all but one of the defendants named in the original action and containing some, but not all, of the claims previously set forth in Case No. 1. In fact, following its voluntary dismissal of Case No. 1, Cardiff could have filed an action identical to the one it dismissed. (Eling Corp. v. Superior Court (1975) 48 Cal.App.3d 89, 90, 123 Cal.Rptr. 174.)	A dismissal “without prejudice” necessarily means without prejudice to the filing of a new or amended complaint, and thus is not a final judgment within the meaning of the nonprospective statute of limitations. <i>Woots v. Amn.Cal.C.C.P.</i> 588.	“Does a dismissal “without prejudice” necessarily mean without prejudice to the filing of a new or amended complaint, and thus is not a final judgment within the meaning of the nonprospective statute of limitations?”	028516.docx	LEGALCASE-00134960-LEGALCASE-00134961	SA, Sub	0.7	0	0	1	1	
	Hawk v. Braniffes, 97 Wash. App. 776	102+157	The Hawks fail to cite to the portion of that very opinion, where, in addressing the trial court’s failure to award the defendant statutory attorneys’ fees following the plaintiff’s nonsuit, we recognized that “[b]everal cases have awarded costs and attorney fees under other statutory or specific contractual provisions when a complaint has been dismissed without prejudice, and the court has not been persuaded that those cases in holding that the statutory prohibition at issue in <i>Conk</i> Insulation did not provide for attorneys’ fees absent a judgment. While a voluntary dismissal under CR 41(a)(1) generally divests a court of jurisdiction to decide a case on the merits, an award of attorneys’ fees pursuant to a statutory provision or contractual agreement is collateral to the underlying proceeding. As a result, the court retains jurisdiction for the limited purpose of considering a defendant’s motion for fees. Any other result would permit a party to voluntarily dismiss an action to avoid the limited purpose of the statute, and thus would contravene the agreement. Moreover, to hold otherwise would unnecessarily subject the courts to separate actions to recover fees readily ascertainable upon dismissal of the underlying claim. Consequently, the trial court here properly retained jurisdiction to award attorneys’ fees under the terms of the lease agreement.	While a voluntary dismissal generally divests a court of jurisdiction to decide a case on the merits, an award of attorney fees pursuant to a statutory provision or contractual agreement is collateral to the underlying proceeding; as a result, the court retains jurisdiction for the limited purpose of considering a defendant’s motion for fees. CR 41(a)(1).	“Does a trial court retain jurisdiction, following landlords’ voluntary dismissal of action to enforce terms of commercial leases?”	028534.docx	LEGALCASE-00135194-LEGALCASE-00135195	Condensed SA	0.74	0	1	0	1	
2133			A party to litigation or who has reason to anticipate litigation has an affirmative duty to preserve evidence that might be relevant to the issue in the lawsuit. Whether a person has reason to anticipate litigation depends on whether the “facts and circumstances ... lead to a conclusion that litigation is imminent or should otherwise be expected.” A court may sanction a party who breaches this duty by destroying relevant evidence or by failing to prevent the destruction of such evidence.	Whether a person has reason to anticipate litigation, and thus has a duty to preserve evidence that may be relevant, depends on whether the facts and circumstances lead to a conclusion that litigation is imminent or should otherwise be expected.	“Does the question of whether a person has reason to anticipate litigation, and thus has a duty to preserve evidence that may be relevant, depend on whether the facts and circumstances lead to a conclusion that litigation is imminent or should otherwise be expected?”	Perital Procedure - Memo # 3309 - C-598.docx	POSS-0002191683-POSS-0002191684	Condensed SA, Sub	0.5	0	1	1	1	
2134	Beard Research v. Bates, 583 A.2d 1175	307A+331												

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2144	Montabano Builders v. Parnis, 2019 WL 1111, 2019 App. 3d 1075	307A+483	Although a party may constructively admit facts, even "ultimate" facts, by failing to respond to a request for admission, a party does not constructively admit facts by failing to respond to requests that contain those conclusions. Shred Pax, 184 Ill.2d at 239, 234 Ill.Dcr. 459, 703 N.E.2d at 76. So, while whether a party paid another party a certain amount of money is a fact that may be included in a request for admission and may be constructively admitted, assertions that a party "breached" a contract or "failed to perform" are legal conclusions that are not appropriately included in a request to admit. Shred Pax, 184 Ill.2d at 40-42, 234 Ill.Dcr. 459, 703 N.E.2d at 79-80.	Although a party may constructively admit facts, even ultimate facts, by failing to respond to a request for admission, a party does not constructively admit facts by failing to respond to requests that contain those conclusions.	"Although a party may constructively admit facts, even ultimate facts, by failing to respond to a request for admission, does a party constructively admit facts by failing to respond to requests that contain those conclusions?"	023778.docx	LEGALASE-00136542-LEGALASE-00136543	Condensed, SA	0.65	839	15,344	14,873	21,876	9,079
2145	McElveen v. City of New Orleans, 888 So. 2d 878	307A+485	Attorney fees awarded for a party's failure to admit genuineness of documents or truth of any matter is the reasonable expense incurred in proving the truth of the requested admission. Broadmann, 803 So.2d 411 at 45. In determining whether the party failing to admit a fact had reasonable grounds to believe that it might prevail for purposes of determining whether to award attorney fees for that failure, the proper standard is whether the party acted reasonably in believing that it might prevail. Id. at 46.	Attorney fees awarded for a party's failure to admit genuineness of documents or truth of any matter is the reasonable expense incurred in proving the truth of the requested admission. LSA-C.C.P. art. 1472.	"Is attorney fees awarded for a party's failure to admit genuineness of documents or truth of any matter is the reasonable expense incurred in requested admission?"	Perital Procedure - Memo # 3735 - C-MS.docx	LEGALASE-0000580-LEGALASE-0000581	SA, Sub	0.59	0	0	1	1	
2146	Herzog v. Reinhardt, 2 Ariz. App. 103	93+42	Some argument is made that a finding of double contempt cannot stand because of the rule that he who comes into equity must come with clean hands. It is true that in its discretion a court of equity may and frequently will withhold giving one party the remedy of contempt if he himself has violated any part of the court's orders, but this rule does not in any way prevent the court from enforcing its orders. Where the welfare of minor children is at stake, the court has the power to enforce its orders regardless of any action of the parties.	In its discretion, court of equity may withhold giving one party remedy of contempt if he himself has violated any part of court's orders, but that does not in any way prevent court from enforcing its orders.	"In its discretion, may a court of equity withhold giving one party a remedy of contempt if he himself has violated any part of a court's orders, but that does not in any way prevent a court from enforcing its orders?"	010260.docx	LEGALASE-00136716-LEGALASE-00136717	Condensed, SA	0.62	0	1	0	1	
2147	In re Marriage of Kuntz, 2007-0601 (La. App. 4 Cir. 10/15/08)	307A+331	In Meak v. Ill. Cent. R. Co., 93-783 (La.7/4/94), 631 So.2d 401, 403, the Louisiana Supreme Court stated that the basic objectives of the discovery process are to allow parties to obtain pertinent facts; to discover true facts and compel their disclosure; to assist in trial preparation; to narrow issues and clarify the issues; and to encourage settlement or abandonment of issues. The court stated that the discovery process is not to be used for production and inspection of documents and tangible things within the scope of discovery and in the possession of an opposing party. Id. Since courts are to construe discovery statutes liberally and broadly, including those provisions addressing the scope of discovery, any relevant unprivileged information, whether or not admissible at trial and whether documents or tangible things, is discoverable. 631 So.2d at 406.	Since courts are to construe discovery statutes liberally and broadly, including those provisions addressing the scope of discovery, any relevant unprivileged information, whether or not admissible at trial and whether documents or tangible things, is discoverable. LSA-C.C.P. art. 1420 et seq.	"Since courts are to construe discovery statutes liberally and broadly, is any relevant unprivileged information discoverable?"	Perital Procedure - Memo # 3394 - C-BP.docx	RCS-03291727-A055-03391728	SA, Sub	0.66	0	0	1	1	
2148	Kins v. Brem, 560 So. 2d 186	307A+240.1	Last, the plaintiffs claim the trial court erred in granting the defendants' motion to strike their second amended complaint. The amendment, which was filed on March 24, 1989, sought to add a fourth count based on a dangerous instrumentality theory and a fifth count based on an attractive nuisance claim. The dangerous instrumentality theory is governed by Tolbert v. Guldby, supra, discussed above. The parties filed a pretrial stipulation on February 22, 1989, agreeing that the pleadings were amended to reflect the dangerous instrumentality theory to be by May 1, 1989, and that the case could be set for trial in June 1989. Amendments to pleadings are to be freely allowed under A.R.Civ.P. 15 when justice so requires. Although under Rule 15 pretrial orders are to control the subsequent course of litigation, the liberal allowance of amendments under Rule 15 takes precedence over strict adherence to Rule 16. Husley v. W.B. Goodwyn Co., 295 Ala. 1, 321 So.2d 645, 648 (1975). Allowing the amendment in this case would not unduly delay trial or prejudice the defendants. The facts upon which counts 4 and 5 were based were the same as those upon which counts 1 and 2 were based. Therefore, no additional discovery would be required by these counts. Thus, the trial court incorrectly granted the defendants' motion to strike the plaintiffs' second amended complaint.	Although pretrial orders are to control subsequent course of litigation, liberal allowance of amendments to pleadings takes precedence over strict adherence to rule governing pretrial orders. Rules Civ.Proc., Rules 15, 16.	"Although pretrial orders are to control subsequent course of litigation, do liberal allowance of amendments to pleadings take precedence over strict adherence to rule governing pretrial orders?"	030353.docx	LEGALASE-00136579-LEGALASE-00136580	Condensed, SA, Sub	0.84	0	1	1	1	1
2149	Fawcett v. Altieri, 38 Misc. 3d 1022	307A+56.1	The Appellate Division, Second Department allows for broad discovery on the issue of damages when a plaintiff states a general loss of the plaintiff's injuries sustained as a result of an accident. McKinney, 37 CB 310 (46).	Broad discovery on the issue of damages is allowed where a plaintiff states a general loss of the plaintiff's injuries sustained as a result of an accident. McKinney, 37 CB 310 (46).	Is broad discovery on the issue of damages allowed where a plaintiff states a general loss of the plaintiff's injuries sustained as a result of an accident?	031384.docx	LEGALASE-00137024-LEGALASE-00137025	Condensed, SA, Sub	0.73	0	1	1	1	

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
2150	United States v. Evans, 517 F.2d 425	63+111	In evaluating his argument regarding intent, we focus specifically on Evans' mental state, for the giving and receiving of an unlawful gratuity are not independent offenses; the donee's intent may differ from the donor's. See generally United States v. Anderson, supra; United States v. Miller, 340 F.2d 421 (4th Cir. 1965). The requisite intent necessary to sustain a conviction for bribery is that the official accept a thing of value "corruptly." However, under the unlawful gratuity subsection all that need be proven is that the official accepted, because of his position, a thing of value "otherwise than as provided by law for the proper discharge of official duty." Compare 18 U.S.C.A. § 201(c) with 18 U.S.C.A.'s § 201(g). Thus, § 201(g) makes it criminal for a public official to accept a thing of value to which he is not lawfully entitled, regardless of the intent of the donor or donee. There is sufficient evidence that Evans accepted the things of value "knowingly and purposefully and not through accident, misunderstanding, inadvertence or other innocent reasons." United States v. Irwin, supra at 197.	Request intent necessary to sustain conviction for bribery is that official accept thing of value "corruptly," however, under unlawful gratuity subsection all that need be proven is that official accepted, because of his position, a thing of value otherwise than as provided by law for proper discharge of official duty, and thus, later subsection makes it criminal for public official to accept thing of value to which he is not lawfully entitled regardless of intent of donor or donee. 18 U.S.C.A. § 201(c). g.	Bribery - memo #500 - C-00355-003290148-R055-003320149	LEGASE-00137784-LEGASE-00137785	Condensed, Order, SA	0.54	839	1	15,344	14,873	21,876	9,029
	United States v. Kemp, 500 F.3d 257	63+113	Moreover, we agree with the government that the District Court's instructions to the jury that it could convict upon finding a "stream of benefits" was legally correct. The key to whether a gift constitutes a bribe is whether the parties intended for the benefit to be made in exchange for some official action; the government need not prove that each gift was provided with the intent to prompt a specific official act. See United States v. Jennings, 360 F.3d 1006, 1014 (4th Cir. 1998). Rather, "[t]he quid pro quo requirement is satisfied so long as the evidence shows a 'course of conduct' in which a gift is given to a public official in exchange for a course of official action on the donor's behalf." Id. Thus, "government may be made with the intent to retain the official's services on an "as needed" basis, so that whenever the opportunity presents itself the official will take specific action on the payor's behalf." Id.; see also United States v. Sawyer, 85 F.3d 713, 730 (1st Cir. 1996) (stating that "a person with continuing and long-term interests before an official might engage in a pattern of repeated, intentional gratuity offenses in order to coax ongoing favorable official action in derogation of the public's right to impartial official services"). While the form and number of gifts may vary, the gifts still constitute a bribe as long as the essential intent "a specific intent to give or receive something of value in exchange for an official act" exists. This theory was accurately and entirely presented to the jury in the jury instructions, and accordingly, we reject Holck and Umbrell's argument that the instructions as proffered were inadequate.	Key to whether a gift constitutes a bribe is whether the parties intended for the benefit to be made in exchange for some official action; government need not prove that each gift was provided with the intent to prompt a specific official act.	01.802.docx	LEGASE-00137784-LEGASE-00137785	Condensed, SA	0.86	0	1	0	1		
2152	Widmer v. Modern Ford Tractor Sales, 244 Ark. 696	307A+483	We have held that upon a motion for summary judgment the burden is on the movant to show that no justiciable issues exist. Widmer v. J. I. Case Credit Corp., supra. We have also held that a motion to quash requests for admissions may constitute written objection thereto and that a failure to answer the requests in such case does not necessarily mean that the requests stand admitted. Widmer v. Wood, 243 Ark. 617, 421 S.W.2d 872.	Motion to quash requests for admissions may constitute written objection thereto, and a failure to answer the requests in such case does not necessarily mean that the requests stand admitted.	"May a motion to quash requests for admissions constitute written objection thereto, and a failure to answer the requests in such a case does not necessarily mean that the requests stand admitted?"	030494.docx	LEGASE-00137729-LEGASE-00137730	Condensed, SA	0.56	0	1	0	1	
2153	Grossmann v. Wagner, 161 Misc. 1	307A+91	Immediately after serving the summons herein plaintiff moved for leave to examine both defendants in order to frame his complaint. This motion was denied, and he thereupon served the present complaint. Issue was joined by the service of separate answers by the two defendants, who appear herein separately and by different attorneys. Plaintiff again sought to examine both defendants and served separate notices upon each, specifying a number of matters concerning which he desires to examine. Each defendant independently moves to vacate the notice addressed to him. The contention made by both, that the complaint fails to state a cause of action and that the examination is therefore unnecessary and not sought in good faith, is not wholly without merit. I should be inclined to hold that no cause of action is stated, were it not for the rule that on motions of this character a pleading will not be scrutinized with the same care and strictness as on a motion to dismiss. Unless prevented by objections based on the paucity of his pleading, plaintiff may be able on the trial to make out a prima facie case on some of the matters in dispute. The court should not grant summary judgment on the complaint is so obviously bad that no cause of action may be spelled out from the facts alleged and the reasonable inferences that may be drawn therefrom.	Right to examination of defendant before trial is not usually denied unless complaint is so obviously bad that no cause of action may be spelled out from facts alleged and reasonable inferences that may be drawn therefrom.	Perital Procedure - Memo # 4477 - C-NS.docx	R055-003317036-R055-003317037	SA, Sub	0.83	0	0	0	1		

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
	Wilborn v. GE Marquette Med. Sys., 163 S.W.3d 264	307A+715	The granting or denial of a motion for continuance is within the trial court's sound discretion. Villegas v. Carter, 711 S.W.2d 624, 626 (Tex.1986); State v. Crank, 666 S.W.2d 91, 94 (Tex.1984); Hernandez v. Heiderlein, 374 S.W.2d 196, 202 (Tex.1964). The trial court's action will be reversed only if it is manifestly unjust. When the ground for the continuance is the withdrawal of counsel, moment must show that the failure to be represented at trial was not due to their own fault or negligence. Villegas, 711 S.W.2d at 626; Crank, 666 S.W.2d at 94. Generally, when movants fail to comply with Tex.R. Civ. P. 25.1's requirement that the motion for continuance be "supported by affidavit," we presume that the trial court did not abuse its discretion in denying the motion. Villegas, 711 S.W.2d at 626; Garcia v. Tex. Emp. Ins. Co., 822 S.W.2d 161, 163 (Tex.1991). The trial court's denial of the right to have its valuable right to remove counsel is reversible error. Villegas, 711 S.W.2d at 626; see Crank, 666 S.W.2d at 94; Steffens v. Celgo, 395 S.W.2d 663, 665 (Tex.Civ.App.-Amarillo 1965, no writ). Therefore, when a trial court allows an attorney to voluntarily withdraw, it must give the party time to secure new counsel and time for the new counsel to investigate the case and prepare for trial. Villegas, 711 S.W.2d at 626; Lowe v. City of Arlington, 453 S.W.2d 479, 382 (Tex.Civ.App.-Fort Worth 1970, no writ); see also Steffens, 395 S.W.2d at 665, n.4 (citing Robinson v. Ringer, 548 S.W.2d 762 (Tex.Civ.App.-Tyler 1977, writ ref'd n.r.e.)). Before a trial court allows an attorney to withdraw, it should see that the attorney has complied with the Code of Professional Responsibility: [A] lawyer should not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving notice to the client, allowing time for him to obtain new counsel, and giving notice to the court. Adams v. Merabank (1991) 54 Cal.3d 105, 284 Cal.Rptr. 318, 813 P.2d 1348. JTC argues that there is a visible evidence of merit. (Adams v. Merabank)	When a trial court allows an attorney to voluntarily withdraw, it must give the party time to secure new counsel and time for the new counsel to investigate the case and prepare for trial.	"When a trial court allows an attorney to voluntarily withdraw, must I give the party time to secure new counsel and time for the new counsel to investigate the case and prepare for trial?"	031919.docx	LEGALCASE-00137938- LEGALCASE-00137939	Condensed, SA	0.92	839 0	15,344 0	34,873 0	21,876 1	9,029
2154														
2155	Stevens v. JTC Enrichment, 100 Cal.App.4th 233	307A+36.1	The next question is whether the client, allowing time for him to obtain new counsel, and giving notice to the court, is a reversible evidence of merit. (Adams v. Merabank (1991) 54 Cal.3d 105, 284 Cal.Rptr. 318, 813 P.2d 1348.) JTC argues that because Adams requires evidence of the defendant's financial condition, the punitive damages portion of the judgment should be set aside. However, JTC is in no position to complain. As recently stated by Division Three of this court in Mike David Co. v. Isod (2000) 78 Cal.App.4th 597, 609, 92 Cal.Rptr.2d 897, "a court may order a defendant to produce evidence of his or her financial condition in order to establish a right to punitive damages. If the plaintiff is not permitted to obtain that information prior to trial, here, of course, respondent did attempt to obtain the information. In fact, when the jury retired to commence its deliberations, counsel for JTC informed the court that his clients had the most recent consolidated report and would present it to the court immediately after the jury returned should a second phase be required.	Acts performed by public employees in course of the official duties are not prepared in anticipation of litigation or for trial within meaning of work-product doctrine merely by virtue of fact that they are likely to be subject of later litigation. Trial Procedure Rule 26(b)(3).	On a court order, a defendant to produce evidence of his or her financial condition following a determination of liability for punitive damages?	Practical Procedure-Memo # 5235, C-OK.docx	ROSS-00329086-ROSS-00329086D	Condensed, SA	0.79	0	1	0	1	
2156	Indiana State Bd. of Pub. Works v. Togo Prines Living Ctr., 592 N.E.2d 1274	307A+35	Therefore, the primary motivating purpose behind the creation of the document must be to aid in trial preparation. United States v. Gulf Oil Corp. (Tems Emer. Ct.App. 1985), 760 F.2d 292, 296. Materials assembled in the ordinary course of business, or pursuant to public requirements unrelated to litigation, or for other nonlitigation purposes are not entitled to the qualified immunity provided by this section. Advisory Committee's Explanatory Notes when Concerning Amendments of Fed.Rules Civ.P. 44, 46, 47, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000											
2157	Squires v. Lafferty, 95 W. Va. 307	260+1	There being no question or contention as to ownership by the plaintiff, Milam's Fort Smokesakes Coal and Company, of the coal underlying the surface of the land in such manner and with such means as would entitle it to the same, and the fact that the defendant, the plaintiff's agent, had knowledge of the plaintiff's ownership of the coal, and that the defendant, the plaintiff's agent, had knowledge of the plaintiff's ownership of the coal, and that the defendant, the plaintiff's agent, had knowledge of the plaintiff's ownership of the coal, and that the defendant, the plaintiff's agent, had knowledge of the plaintiff's ownership of the coal, and that the defendant, the plaintiff's agent, had knowledge of the plaintiff's ownership of the coal, and that the defendant, the plaintiff's agent, had knowledge of the plaintiff's ownership of the coal, and that the defendant, the plaintiff's agent, had knowledge of the plaintiff's ownership of the coal, and that the defendant, the 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2159	Am. Seal-Kap Corp. v. Smith Lee Co., 154 Misc.2d 176	307A-93	Trade secrets belonging to both plaintiffs and defendants are involved in this claim that have been wrongfully used by the defendant. The defendant denies the charge made by the plaintiffs. The purpose of both motions is of course to aid the parties in meeting the issue. Ordinarily, a defendant is entitled to full particulars of the plaintiff's claim, and a plaintiff is entitled to examine before trial, particularly in a case where many of the facts upon which the action is grounded are in the possession of the defendant. On the other hand, "secrets" constitute the very basis of this action.	Ordinarily, a defendant is entitled to full particulars of plaintiff's claim, and plaintiff is entitled to examine defendant before trial, particularly in a case where many of the facts upon which action is grounded are in possession of defendant.	"Is the defendant entitled to full particulars of plaintiff's claim and is plaintiff entitled to examine defendant before trial, particularly in a case where many of the facts upon which action is grounded are in defendant's possession?"	Perital Procedure - Memo # 4527 - C- ES.docx	R055-003304201-R055-003304002	Condensed SA	0.64	839	15,344	14,873	21,876	9,079
2160	Bowes v. Nat'l City Bank of New York, 169 Misc.2d 78	307A-93	It does not follow that plaintiff is entitled to examine the defendant before trial for the purpose of showing that the National City Company was a subsidiary of the National City Bank and acted in its interest in the transactions alleged. Plaintiff cannot succeed without establishing those facts, but in the absence of special circumstances an examination before trial will not be ordered where its purpose is to compel the defendant to produce documents in the possession of the plaintiff. Ordinarily, the party seeking the examination must show some reasonable ground for belief that the result of the examination will be to establish the matters which he seeks to prove which are material and necessary for the cause of action alleged. Rules of Civil Practice, rule 122; Civil Practice Act, § 3386, 289, 296.	In a absence of special circumstances, an examination before trial will not be ordered where its purpose is to compel the defendant to disclose to the plaintiff whether or not there is a cause of action and the party seeking the examination must show some reasonable ground for belief that the result of the examination will be to establish the matters which he seeks to prove which are material and necessary for the cause of action alleged. Rules of Civil Practice, rule 122; Civil Practice Act, § 3386, 289, 296.	"Will a plaintiff be permitted, in the discretion of the court, to examine the defendant before trial?"	031629.docx	LEGASE-00138450-LEGASE-00138451	SA, Sub	0.48	0	0	1	1	1
2161	Crow-Crimmies-Wolff & Munier v. Westchester City, 126 A.D.2d 696	307A-36.1	Admissions of fact explicitly or implicitly made "without prejudice" during settlement negotiations are protected from discovery pursuant to the public policy of encouraging and facilitating settlement (see, White v. Old Dominion Steamship Co., 102 N.Y. 661, 662, 6 N.E. 289). Actions taken and observations made for the stated purpose of arriving at a settlement agreement, and expressly not for litigation, which actions would not have been accomplished except in a mutual attempt to reach a settlement, are not discoverable and are protected by the same public policy of encouraging attempts at settlement.	Admissions of fact explicitly or implicitly made without prejudice during settlement negotiations are protected from discovery pursuant to public policy of encouraging and facilitating settlement. McKinney's CPLR § 310.1(b), § 701(4).	Are admissions of fact explicitly or implicitly made without prejudice during settlement negotiations protected from discovery pursuant to a public policy of encouraging and facilitating settlement?	Perital Procedure - Memo # 5059 - C- ES.docx	R055-00331875-R055-003318758	SA, Sub	0.62	0	0	1	1	1
2162	Olgood v. Sutterland, 36 Misc.2d 443	307A-74	The effect of a failure to give notice of the return of a deposition is, not to render it inadmissible, but simply to leave the adverse party a liberty to make at the trial all objections to its introduction which he could have made upon a motion to suppress. Rep. 171.	Under Gm.S.I. 878, c. 78, § 539 (M.S.A. § 591.13), concerning objections to depositions, the effect of a failure to give notice of the return of a deposition is, not to render it inadmissible, but simply to leave the adverse party at liberty to make at the trial all objections to its introduction which he could have made upon a motion to suppress.	"Concerning objections to depositions, is the effect of a failure to give notice of the return of a deposition not to render it inadmissible?"	Perital Procedure - Memo # 5381 - C- SAG.docx	R055-003302258	Condensed SA, Sub	0.11	0	1	1	1	1
2163	Citizens Cas. Co. of New York v. Hackley, 17 Utah 2d 304	307A-749.1	The pretrial order controls the issues of the case where it is made without objection and no motion is made to change it, unless it is modified at the trial to prevent a manifest injustice. Defendant avers that such a motion was made at the beginning of the trial but the record does not support his contention. His counsel stated: "I would like to make a motion that the Court take judicial notice of the proceedings held in this case with the two companion cases, which request the court to try this case with the two companion cases, which request the court to subsequently denied. We think the court properly limited the trial to the misappropriation of funds which were allegedly paid to the defendant for insurance premiums. This construction of the pretrial order made it unnecessary for the trial court to rule on the question of the alleged invalidity of the plaintiff's certificate of authority to transact business in this state.	Pretrial order controls issues of case where it is made without objection and no motion is made to change it, unless modified at trial to prevent manifest injustice. Rules of Civil Procedure, rule 16.	"Does a pretrial order control issues of a case where it is made without objection and no motion is made to change it, unless modified at trial to prevent manifest injustice?"	Perital Procedure - Memo # 2476 - C- S1.docx	R055-00328086-R055-003385807	Condensed SA, Sub	0.8	0	1	1	1	1
2164	People v. Muniffo, 50 N.Y.2d 326	1259-106	Indeed, a requirement that the disruptive behavior proscribed by our disorderly conduct statute be of public rather than individual dimension was evoked even before subdivision 2 of section 722 of the former Penal Law was replaced by the present section 240.20 (People v. Sopansky, 25 Misc.2d 319, 203 N.Y.S. 306 (Gabrielli, J.); see, also, People v. Chenick, 302 N.Y. 56, 60-61, 36 N.E.2d 67). The clear aim was to reserve the right of individual disparagement to a point where they had become a potential or immediate public problem. In deciding whether an act carries public ramifications, courts are constrained to assess the nature and number of those attracted, taking into account the surrounding circumstances, including, of course, the time and the place of the episode under scrutiny (see People v. Phillips, 245 N.Y. 401, 402-403, 157 N.E. 506; People v. Garner, 88 Misc.2d 65, 388 N.Y.S.2d 852, aff'd, on spec. leave 40 N.Y.2d 865, 885 N.Y.S.2d 961, 257 N.E.2d 1016).	Indeciding whether an act carries public ramifications, courts are constrained to assess nature and number of those attracted, taking into account surrounding circumstances including time and place of episode under scrutiny.	"In deciding whether an act carries public ramifications with respect to disorderly conduct statute, should the courts consider surrounding circumstances like time and place of the act?"	01441.docx	LEGASE-00140131-LEGASE-00140132	Condensed SA	0.78	0	1	0	1	1
2165	State ex rel. Rosen v. Smith, 241 S.W.3d 431	307A-517.1	In non-jury cases, a plaintiff may voluntarily dismiss his or her suit without a court order at any time prior to the introduction of evidence at trial. Rule 67.02(b)(2). Once a plaintiff does so, "it is as if the suit were never brought." Liberman v. Liberman, 844 S.W.2d 79, 80 (Mo.App. E.D. 1992). The circuit court may take no further steps as to the dismissed case, and the case is removed from the court's docket. The court has no jurisdiction as of the date of dismissal. Id. at 81. This is so despite the fact the opposing party had motions pending at the time the dismissal was filed. See Atteberry v. Hamblin Regional Hosp., 875 S.W.2d 171, 173 (Mo.App. E.D. 1994).	In non-jury cases, plaintiff may voluntarily dismiss his suit without a court order at any time prior to the introduction of evidence at trial, and once plaintiff has done so, it is as if the suit were never brought. V.A.M.R. 67.02(b)(2).	Can a plaintiff voluntarily dismiss a suit without court order prior to the introduction of evidence in non-injury cases and is it as if the suit were never brought at trial?	Perital Procedure - Memo # 2409 - C- ES.docx	R055-00339562-R055-003328663	Condensed Order, SA	0.65	1	1	0	1	1

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2166	Odwane v. Robertson Aerial-AG, 13 Ark. App. 285	307A-231	Answers to interrogatories, as well as any other information disclosed on discovery are not a pleading or a defense to a pleading. While such information may give rise to amendments to pleadings, it does not in and of itself constitute an amendment to a pleading or reject new issues into the case. The court's decision to grant leave to amend the pleadings (primary) (in ARCP Rule 15(a)) which permits liberal amendments to pleadings without leave of court. ARCP Rule 15(a) and the Notes indicate that amendments to pleadings should be allowed in nearly all instances without special permission from the court except where on motion of an opposing party the court determines either that prejudice would result or that disposition of the cause would be unduly delayed. In those instances the court may strike such amended pleadings or grant a continuance of the proceedings.	Amendments to pleadings should be allowed in nearly all instances without special permission from the court except where on motion of an opposing party the court determines either that prejudice would result or that disposition of the cause would be unduly delayed, and in those instances the court may strike such amended pleadings or grant a continuance of the proceedings. Rules CivProc., Rule 15(a).		ROSS-003329165-RD25-003329670	Condensed_SA_Sub 0-34	839 0	15_344 1	14,873	21,876	9,029	
	Hale v. Matthews, 118 Ind. 527	307A-74	Where it is discovered after the publication of a deposition that the seal of the officer before whom the same was taken is not attached to his certificate, the court may, although a motion to quash is made, order the deposition to be returned to the officer in order that the omission may be supplied by him.	"Where it is discovered after the publication of a deposition that the seal of the officer before whom the same was taken is not attached to his certificate, the court may, although a motion to quash is made, order the deposition to be returned to the officer in order that the omission may be supplied by him."	Pretl Procedure - Memo # 5319 - C - KG.docx	ROSS-0032889270	Condensed_SA_Sub 0	0	1	1	1	1	
2168	City of Tulsa v. City of Fillmore, 198 Cal. App. 4th 131.	35A-2105	The application of the primary jurisdiction doctrine results in a stay of the action pending the resolution of the issues within the expertise of the administrative body, rather than a dismissal.	"The application of the primary jurisdiction doctrine results in a stay of the action pending the resolution of the issues within the expertise of the administrative body, rather than a dismissal?"	Pretl Procedure - Memo # 5273 - C - SPB.docx	ROSS-003304081-RD25-003304082	Condensed_SA	0.86	0	1	0	1	
	Wayne v. Ohio Nurses' Teachers, & Helpers Local Union No. 414, 73 N.E.3d 150	307A-454	The District also claim that the Union and Employer have violated Indiana Code provisions regarding the right of employees to organize and to be represented by their choice of union. The trial court concluded that it lacked subject matter jurisdiction over this claim on the basis that federal law has preempted Indiana law on such questions, depriving it of subject matter jurisdiction. In ruling on a motion to dismiss for lack of subject matter jurisdiction, the trial court may consider not only the complaint and motion but also any affidavits or evidence submitted in support. In addition, the trial court may weigh the evidence to determine the existence of the requisite jurisdictional facts.	"In ruling on a motion to dismiss for lack of subject matter jurisdiction, the trial court may consider not only the complaint and motion but also any affidavits or evidence submitted in support to determine the existence of the requisite jurisdictional facts?"	032972.docx	LEGALCASE-00140001-LEGALCASE-00140002	Condensed_SA_Sub 0-7	0	1	1	1	1	
2170	Hadi v. Am. Zurich Ins. Co., 253 S.W.3d 339	307A-104(1)	A plaintiff is required to allege facts affirmatively demonstrating the trial court's jurisdiction. An. Motorists Ins. Co. v. Dodge, 63 S.W.3d 801, 803 (Tex.2001). Courts, however, are not limited to the consideration of those facts but may also consider evidence proffered by the parties on jurisdictional issues raised. 350 S.W.3d at 355. Consequently, if a party has not established its jurisdiction, the trial court would not be bound by its jurisdictional claim for lack of jurisdiction. The opposite is true as well: if a party exhausts its administrative remedies but fails to properly or adequately plead this, the challenge is not to the trial court's jurisdiction but to the adequacy of the plaintiff's pleading.	"If a party has not exhausted its administrative remedies but has pleaded that it has, the trial court would not be bound by this allegation but could still dismiss a claim for lack of jurisdiction; conversely, if a party exhausts its administrative remedies but fails to properly or adequately plead this, the challenge is not to the trial court's jurisdiction but to the adequacy of the plaintiff's pleading."	033259.docx	LEGALCASE-00140674-LEGALCASE-00140675	Condensed_SA	0.48	0	1	0	1	
2171	United States v. Jamoiti, 673 F.2d 578	63-3	The district court pressed the concept again used by both Schwartz and Jamoiti that the project be "legal" and "legitimate". As the Schwartz shows, Schwartz expressed concern that the hotel was not to be used for immoral purposes, and Jamoiti was concerned that the hotel was not to be used for gambling. While the defendants' statements may indicate their unwillingness to support the project if it were to be used for such illegal purposes, other because they were interested in Philadelphia's welfare or because such use would become a matter of public knowledge, neither defendant acted improperly in accepting money in return for their support and influence. As this court has previously held, it is neither material nor a defense to bribery that "had there been no bribe, the [public official] might, on the available data, lawfully and properly have made the very recommendation that [the briber] wanted him to make." United States v. Labowitz, 531 F.2d 393, 394 (2d Cir. 1976). Judge Hadlie, writing for the court, set out the rationale for first holding that a major portion of the government's evidence was inadmissible under Federal Rule 403 and secondly, evaluation and unbiased judgment on the part of those who participate in the making of official decisions. Therefore, society deals sternly with bribery which would substitute the will of an interested person for the decision of a public official as the controlling factor in official judgment.	"It is neither material nor a defense to bribery that had there been no bribe, public official might, on the available data, lawfully and properly have made the very recommendation that the briber wanted him to make."	011992.docx	LEGALCASE-00140838-LEGALCASE-00140839	Condensed_SA	0.86	0	1	0	1	

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2172	United States v. Purdy, 144 F.3d 241.	63-4121	In short, kickbacks made at any point in the government procurement process for the purpose of improperly obtaining favorable treatment are prohibited by the Act, regardless of whether or not the offender knew of the government involvement. Cf. United States v. Focht, 420 U.S. 971, 973 (1975) (affirming conviction of defendant who did not know that his kickbacks were for the benefit of a federal officer within 18 U.S.C. § 111). It follows from this conclusion that Purdy's claim that the evidence was insufficient to establish his intent to obtain government-related business is entirely irrelevant.	Kickback made at any point in government procurement process for purpose of improperly obtaining favorable treatment are prohibited by Anti-Kickback Act, regardless of whether or not offender knew of government involvement. Anti-Kickback Act of 1986, § 1 et seq., 41 U.S.C.A. § 331 et seq.	Is a kickback that's made during the government procurement process for the purpose of obtaining favorable treatment still prohibited by the Anti-Kickback Act if the offender did not know government involvement?	012136.docx	LEGALASE-00141935-LEGALASE-00141936	Condensed, SA, Sub 0.54	0.34	839	15,344	14,073	21,876	9,029
	State, for Use of Law v. Cymer, 27 Fed. App. 518	260-93	The fact cannot be ignored that the statute imposed a positive duty upon the defendants to inspect the mine, and that the defendants, who were working in the mine, if he failed or neglected to perform this duty, this was actionable negligence for which he would be liable to workmen injured in explosion if his failure to inspect mine was proximate cause of explosion and their consequent injuries. Code 1932, SS 5547-5549, 5551, 5567, 5569, 8621.	Statute imposed positive duty upon district mine inspector to inspect mines and to cause workmen to be protected from explosion. If he failed to perform such duties, this was actionable negligence for which he would be liable to workmen injured in explosion if his failure to inspect mine was proximate cause of explosion and their consequent injuries. Code 1932, SS 5547-5549, 5551, 5567, 5569, 8621.	Is the failure to perform a statute imposed positive duty to inspect mines and to cause workmen to be protected from explosion, for which liability would be incurred?	Mines and Minerals-003002333	ROSS-003002332-ROSS-003002333	Condensed, SA, Sub 0.03	0.03	0	1	1	1	1
2173	Szczedrakowski v. Gossett, 342 U.S. App. 3d 344	307A-477-1	To ensure that the saddle purpose of Rule 23.6 is accomplished, a party must be able to present evidence in support of its motion to dismiss with the party's reasonable control. In this case that would include the defendant's attorney and insurance company investigators or representatives. We believe that this finding reflects the long-accepted practice of trial attorneys in the courts of Illinois.	A party has a good-faith obligation to make a reasonable effort to secure evidence in support of its motion to dismiss with the party's reasonable control. See CI Rules, Rule 216.	Should a party have a good-faith obligation to make a reasonable effort to secure evidence in support of its motion to dismiss with the party's reasonable control?	010607.docx	LEGALASE-00141318-LEGALASE-00141319	Order, SA	0.57	1	0	0	1	
2174	F. B. Walker & Sons v. Rose, 223 Miss. 694	307A-723-1	The absence of a party's cause for a continuance when the case is presented to the court, and the fact that the party has failed to present evidence of the case, and that such be shown to the court, is not a basis for conclusion, but by evidence justifying such a conclusion. Coleman v. Bowman, 135 Miss. 137, 99 So. 465. Neither in the evidence nor otherwise was it shown that appellant would be a material witness in her own behalf. To justify a continuance upon that ground it was necessary that the application set forth with reasonable clearness the material facts upon which appellant would testify to. Motion. Ware v. State, 133 Miss. 837, 98 So. 2d 100.	To justify continuance upon ground of absence of party, it is necessary that the application set forth with reasonable clearness material facts such party would testify to if present.	"To justify continuance upon the ground of absence of a party, it is necessary that the application set forth with reasonable clearness material facts such party would testify to if present?"	Pretrial Procedure-002827774	ROSS-002827773-ROSS-002827774	Condensed, SA	0.72	0	1	0	1	
2175	Sawyer v. First City Fin. Corp., 124 Cal. App. 3d 390	307A-7127-1	At the hearing of the motion for continuance on February 6, counsel for the defendants did argue that the case should not be continued to permit consideration of a consolidation motion because consolidation would be improper by virtue of the different theories and causes of action in Sawyer I; however, no express argument was made about, nor consideration given, to the question of the res judicata effect of the prior trial. The court, in denying the motion, stated that the case was then one continued trial date. Pending only nine days hence, the trial court presumably considered further continuance to be prejudicial to the rights of the defendants. A court is not required to grant a continuance of a trial when the pleadings have been completed, adequate time for discovery has been provided, the issues are joined, and one side is ready for trial, even though the moving party alleges newly discovered facts or facts that would be material to its case. See County of San Bernardino v. Davis Mining & Engineering Corp. (1977) 72 Cal App 3d 776, 783, 140 Cal Rptr. 383.). The reasonable interpretation to be derived from a review of the record in Sawyer I was that the court denied the motion for continuance because Sawyer I was ready for trial, had been delayed previously and should not be delayed further. Therefore, while we have determined that the motion for summary judgment should have been granted upon the ground of summary judgment, we have concluded that the trial court's denial of the motion were not estopped by their prior conduct from making the motion.	A court is not required to grant a continuance of a trial when the pleadings have been completed, adequate time for discovery has been provided, the issues are joined, and one side is ready for trial, even though the moving party alleges newly discovered facts or facts that would be material to its case. See County of San Bernardino v. Davis Mining & Engineering Corp. (1977) 72 Cal App 3d 776, 783, 140 Cal Rptr. 383.). The reasonable interpretation to be derived from a review of the record in Sawyer I was that the court denied the motion for continuance because Sawyer I was ready for trial, had been delayed previously and should not be delayed further. Therefore, while we have determined that the motion for summary judgment should have been granted upon the ground of summary judgment, we have concluded that the trial court's denial of the motion were not estopped by their prior conduct from making the motion.	"When an amendment is made containing substantially new and material allegations, must the opposing party be given a continuance to meet new allegations and prepare for trial?"	Pretrial Procedure-Memo # 4656 - C-Sk.docx	LEGALASE-00031154-LEGALASE-00031155	Condensed, SA	0.79	0	1	0	1	
2176	Pritchard v. Pritchard, 92 Conn. App. 327	13-6	"Mootness is a threshold issue that implicates subject matter jurisdiction, which imposes a duty on the court to dismiss a case if the court can no longer grant practical relief to the parties."	"Mootness" is a threshold issue that implicates subject matter jurisdiction, which imposes a duty on the court to dismiss a case if the court can no longer grant practical relief to the parties?"	Is mootness a threshold issue that implicates subject-matter jurisdiction, which imposes a duty on the court to dismiss a case if the court can no longer grant practical relief to the parties?"	Pretrial Procedure-Memo # 5966 - C-Sk.docx	ROSS-00301031-ROSS-00301034	Condensed, SA	0.8	0	1	0	1	
2177														
2178	Ex parte RT Cels. Holdings, 225 So. 3d 37	307A-554	"[A]s Hempt is seek enforcement of an outboud forum selection clause in its contract with the defendant, it is not a question of contractual improper venue. Ala. R. Civ. P. 120(b)(3).	Is an Hempt is seek enforcement of an outboud forum selection clause in its contract with the defendant, it is not a question of contractual improper venue? Ala. R. Civ. P. 120(b)(3).	Is an Hempt is seek enforcement of an outboud forum selection clause in its contract with the defendant, it is not a question of contractual improper venue?	Pretrial Procedure-Memo # 5968 - C-Mk.docx	ROSS-003104831-ROSS-003104832	Condensed, SA	0.61	0	1	0	1	
2179	Brown Grp. Retail v. State, 155 P.3d 483	307A-554	In Colorado, statutory governmental immunity bars a claim is a question of public entity that lie in tort could lie in tort, regardless of the cause of action or the form of relief chosen by the claimant. Section 24-10-108. Whether governmental immunity bars a claim is a question of subject matter jurisdiction that, if raised before trial, is properly addressed by the trial court as a C.R.C.P. 121(b)(1) motion to dismiss. Tidwell v. City &	Whether governmental immunity bars a claim is a question of subject matter jurisdiction that, if raised before trial, is properly addressed by the trial court as a motion to dismiss. West's C.R.S.A. § 24-10-108; Rules Civ.Proc. Rule 121(b)(1).	"Whether governmental immunity bars a claim is a question of subject matter jurisdiction that, if raised before trial, is properly addressed by the trial court as a motion to dismiss?"	Pretrial Procedure-Memo # 5988 - C-NS.docx	ROSS-00310368-ROSS-00310369	SA, Sub	0.5	0	0	1	1	

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	Brown-McKee v. Fatalis, Const. Mech., 387 F. Supp. 38	251+155	In Tai Ping Inc. Co. v. M/V Wanchuan, 731 F.2d 1141 (5th Cir.1984), the Fifth Circuit Court of Appeals recently held that under the intervening doctrine, where a party asserts several causes of action, of which at least one lies within the federal court's exclusive jurisdiction, the entire case must remain in federal court despite the presence of an arbitration agreement. Id. at 1146. This approach avoids "encroachment by the arbitrator into an area that Congress has deemed to be within the federal court's exclusive jurisdiction." Id. (citing Wilko v. Swan, 346 U.S. 427, 74 S.Ct. 182, 98 L.Ed. 168 (1953)). See also Greenham Cotton v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 720 F.2d 1446 (5th Cir. 1983); Wiley v. Oppenheimer & Co., 637 F.2d 318 (5th Cir.1981); and Skibey v. Tandy Corp., 543 F.2d 540 (5th Cir.1976), cert. denied, 434 U.S. 824, 98 S.Ct. 71, 54 L.Ed.2d 482 (1977).	Under the intervening doctrine, where a party asserts several causes of action, of which at least one lies within the federal court's exclusive jurisdiction, the entire case must remain in federal court despite an arbitration agreement.	Does the intervening doctrine require the entire case to remain in federal court despite the presence of an arbitration agreement?	007648.docx	LEGALCASE-00143370-LEGALCASE-00143371	Condensed, SA	0.73	839	1	15,344	14,873	21,876	9,029
2180			"[I]n an attempt to seek enforcement of the out-of-court forum-selection clause is properly presented in a motion to dismiss without prejudice, pursuant to Rule 12(b)(3). Ala. R. Civ. P., for contractually imposed venue. Additionally, we note that a party may submit incidental matters to support a motion to dismiss that attacks venue. Williams v. Skyline Communications Corp., 781 So.2d 241 (Ala. Civ. App. 2000), quoting Crowe v. City of Athens, 733 So.2d 447, 449 (Ala. Civ. App. 1999); Ex parte D.M. White Contr. Co., 805 So.2d 370, 372 (Ala. 2001).	An attempt to seek enforcement of an out-of-court forum-selection clause is properly presented in a motion to dismiss without prejudice for contractually imposed venue. Ala. R. Civ. P. 12(b)(3).	Do a motion to dismiss without prejudice for contractually improper venue, can an attempt to seek enforcement of an out-of-court forum-selection clause properly presented?"	032999.docx	LEGALCASE-00143023-LEGALCASE-00143024	Condensed, SA	0.65	0	1	0	1		
2181			In reviewing a motion to dismiss for lack of subject matter jurisdiction, the relevant question is whether the type of claim presented falls within the general scope of the authority conferred upon the court by constitution or statute. Russell v. Bowman, Hentz, Boscia & Vcan, P.C., 744 NE.2d 467, 470 (Ind.Ct.App.2001). A motion to dismiss for lack of subject matter jurisdiction presents a threshold question with respect to the court's power to act. The relevant question is whether the type of claim presented falls within the scope of the authority conferred upon the court by constitution or statute. Trial Procedure Rule 22(B)(1).	In reviewing a motion to dismiss for lack of subject matter jurisdiction, the relevant question is whether the type of claim presented falls within the scope of the authority conferred upon the court by constitution or statute. Trial Procedure Rule 22(B)(1).	Does a motion to dismiss for lack of subject matter jurisdiction present a threshold question with respect to a court's power to act?	033001.docx	LEGALCASE-00143023-LEGALCASE-00143030	Order, SA	0.61	1	0	0	1		
2182			In the instant case, Sherman seeks de novo review by asserting a question of construction regarding the following language from Rule 103(b): "If the failure to exercise reasonable diligence to obtain service on a defendant occurs after the expiration of the applicable statute of limitations, the dismissal shall be with prejudice. Ill. S.Ct. R. 103(b) (eff. July 4, 2007). To whatever extent this language needs construction, we conclude that it is plain and unambiguous. An action "shall" be dismissed "with prejudice" if the plaintiff fails "to exercise a defendant" after the statute of limitations expires. One cannot make this determination, however, without first addressing the question of reasonable diligence, and we review the circuit court's finding on reasonable diligence for abuse of discretion.	An action shall be dismissed with prejudice if the plaintiff fails to exercise reasonable diligence to obtain service on a defendant after the statute of limitations expires. Sup. Ct.Rules, Rule 103(b).	Does Rule 103(b) requires a plaintiff to act with reasonable diligence in effecting service of process on a defendant and if the plaintiff fails to act with reasonable diligence after the statute of limitations expires shall the cause of action be dismissed with prejudice?	Perital Procedure - Memo # 6258 - C - DHA.docx	LEGALCASE-00032726-LEGALCASE-00032727	SA, Sub	0.75	0	0	1	1		
2183			Notwithstanding the extension of the statute of limitations, Parimley's initial complaint was correctly dismissed, although with the wrong classification. Failure to serve process within 120 days of the filing of a complaint, absent proof of "good cause," shall warrant dismissal upon the court's initiative or upon motion. M.R.C.P. 4(h); Heard v. Remy, 937 So.2d 939, 941 (6) (Miss.2006). However, Rule 4(h) dismissal should be made without prejudice, not with prejudice as the trial court did here. M.R.C.P. 4(h). Therefore, we find that the trial court's holding dismissing Parimley's January 31, 2005, complaint with prejudice was error. The January 31, 2005, complaint should have been dismissed without prejudice for failure to properly serve process within 120 days.	While failure to serve process within 120 days of filing of complaint, absent proof of good cause, warrants dismissal upon court's initiative or upon motion, such dismissal should be made without prejudice, not with prejudice. Rules Civ.Proc., Rule 4(h).	Should dismissal for failure to serve process within 120 days of filing of complaint have been without prejudice?	Perital Procedure - Memo # 6288 - C - P8.docx	ROSS-003288271-ROSS-003288272	Condensed, Order, SA	0.67	1	1	0	1		1
2184			Federal Rule of Civil Procedure 4(m) requires that a plaintiff serve all defendants to an action within 120 days after the filing of the complaint. If a plaintiff fails to comply with this time limit but shows good cause for that failure, the Court is required to provide him with additional time for service. Id. Where no good cause is shown, the Court has the discretion to dismiss the complaint without prejudice or to order that service be made within a specified time. Id.; Zapata v. City of New York, 502 F.3d 159, 196-97 (2d Cir.2007) (holding that district courts have discretion to grant extensions of time to serve process even in the absence of good cause). "Ordinarily, a plaintiff faced with a dismissal motion pursuant to Rule 4(m) must "advance some colorable excuse for neglect" to avoid the dismissal of his claims. Zapata, 502 F.3d at 1198; Bagley/Assagui v. Connecticut, 470 F.3d 488, 509 (2d Cir.2006). Where good cause is lacking, the Second Circuit will not disturb a district court's decision to dismiss a complaint for failure to serve process on the record that the district court weighed the impact that a dismissal or extension would have on the parties." Zapata, 502 F.3d at 1197.	Where no good cause is shown for plaintiff's failure to serve all defendants to an action within 120 days after the filing of the complaint, the Court has the discretion to dismiss the complaint without prejudice or to order that service be made within a specified time. Fed Rules Civ.Proc.Rule 4(m), 28 U.S.C.A.	Should dismissal for failure to serve process within 120 days of filing of complaint have been without prejudice?	033777.docx	LEGALCASE-00142891-LEGALCASE-00142892	Order, SA	0.74	1	0	0	1		
2185			Generally, service of a summons and complaint must be made within 120 days after the commencement of the action (see CPR 306(b)). If service is not made within the time provided, the court, upon motion, must dismiss the action without prejudice, or, "upon good cause shown or in the interest of justice, extend the time for service." (Id.). "An extension of time for service is a matter within the court's discretion." (Id.). "An extension of time for service is a matter within the court's discretion." (Id.). "An extension of time for service is a matter within the court's discretion." (Id.). "An extension of time for service is a matter within the court's discretion." (Id.). "An extension of time for service is a matter within the court's discretion." (Id.). "An extension of time for service is a matter within the court's discretion." (Id.). "An extension of time for service is a matter within the court's discretion." (Id.). 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2187	Stevens v. Watson, 16 Cal. App. 3d 629	371+2003	The power of the State to select the subjects of taxation or to grant exemptions therefrom is very broad and a legislative determination in this field must be sustained if there is any conceivable state of facts which would support it. It is irrelevant in the exercise of the power to tax that a majority of the taxpayers are not benefited by the exemption. Neither due process nor equal protection imposes upon a state any rigid rule of equality of taxation. (Citations). This Court has repeatedly held that inequalities which result from a singling out of one particular class for taxation or exemption, infringe no constitutional limitation. (Citations).	Power of state to select subjects of taxation or to grant exemptions therefrom is very broad and legislative determination in such field must be sustained if there is any conceivable state of facts which would support it.	Can the legislative determination in the power of the state to select subjects of taxation or to grant exemptions be sustained if there is any conceivable state of facts which would support it?	015400.docx	LEGALASE-00142700- LEGALASE-00142701	Condemned, SA	0.67	0	1	14,873	21,876	9,029
2188	Alamuth v. City of Albany, 240 Ga. 86	41+32	The recoverability of workers' compensation benefits is strictly a matter of statutory construction. Compare OREGON ASSOCIATES of Albany v. Littleton, supra. "The ordinary rules of law do not apply to actions arising under this statute, but the act itself constitutes a complete code of laws upon the subject."	Recoverability of workers' compensation benefits is strictly matter of statutory construction. Compare OREGON ASSOCIATES of Albany v. Littleton, supra. Workers' Compensation Act constitutes complete code of laws upon the subject, and ordinary rules of law do not apply. O.C.G.A. § 34-9-1 et seq.	"Does the Workers' Compensation Act constitute a complete code of laws upon the subject, and ordinary rules of law do not apply to actions benefiting strictly a matter of statutory construction?"	048143.docx	LEGALASE-0014206- LEGALASE-00142107	Condemned, SA, Sub 0.2		0	1	1	1	1
2189	Jones v. Blake, 120 A.D.3d 415	360+2811	Our review of this record is informed by two guiding principles. First, it is well settled that in a proceeding such as this, the burden of proof is on the party asserting the claim. Second, the claimant must establish the claimed residence is not bona fide or otherwise compliant with the constitutional or statutory requirements. (See Matter of Skovits v. Koo, 54 A.D.3d 432, 433, 463 N.Y.S.2d 87 [2d Dep't.2008]). Second, generally when a reference has been made to a special referee to hear and report, if the referee's determination turns upon an assessment of the witnesses' credibility, the court should defer to the referee as the trier of fact. (Matter of Skovits v. Koo, 54 A.D.3d 432, 433, 463 N.Y.S.2d 86 [1st Dep't.2008]).	In proceedings seeking to establish that candidate did not satisfy the residency requirements for the public office of Member of the Assembly, the burden of proof is on the party asserting the claimant's claimed residence is not bona fide or otherwise compliant with the constitutional and statutory requirements, where there is conflicting evidence, the resolution of the conflict lies within the province of the finder of fact, and should not be disturbed on appeal unless it is obvious that the conclusion could not be reached under any fair interpretation of the evidence. McKinney's Const. Art. 3, § 7; McKinney's Election Law § 1-10(4)(2).	Is the question of residence based on a variety of factors and circumstances?	Domicile - Memo # 16 - C - SA.docx	ROSS-00300885-ROSS-00300886	Condemned, SA, Sub 0.55	0	1	1	1	1	1
2190	Potter v. State Farm Mut. Auto. Ins. Co., 996 P.2d 781	217+649	In the context of automobile insurance exclusions, "residence" is determined on a case-by-case basis using factors such as intent and relative permanence. Midwest Mutual Insurance Co. v. Traus, supra. In general, residence denotes a place where a person dwells. It "simply requires basic physical presence and some degree of permanence." Carson v. District Court, 116 Colo. 380, 388, 180 P.2d 525, 530 [1947].	In the context of automobile insurance exclusions, "residence" is determined on a case-by-case basis using factors such as intent and relative permanence. In general, residence denotes a place where a person dwells, and simply requires bodily presence as an inhabitant in a given place.	"Does "residence" simply require bodily presence as an inhabitant in a given place?"	014492.docx	LEGALASE-00144409- LEGALASE-00144410	Condemned, SA	0.28	0	1	0	1	1
2191	Bauer v. Douglas Aquatics, 207 N.C. App. 65	307+4584	Appellant correctly notes that when a defendant supplements its motion with affidavits or other supporting evidence, the unverified allegations of a plaintiff's complaint "can no longer be taken as true or controlling." [1] "Id. at 163, 565 S.E.2d at 708 (quoting Bruggeman, 138 N.C. App. at 625, 745, 532 S.E.2d at 218). In that case, a plaintiff cannot rest on the unverified allegations of its complaint, but must submit evidence that the court has jurisdiction. However, a verified complaint may be treated as an affidavit if it (1) is made on personal knowledge, (2) sets forth such facts as would be admissible in evidence, and (3) shows affirmatively that the affiant is competent to testify to the matters stated therein."	When a defendant supplements its motion to dismiss for lack of personal jurisdiction with affidavits or other supporting evidence, the unverified allegations of a plaintiff's complaint can no longer be taken as true or controlling, and a plaintiff cannot rest on the complaint's allegations, but must submit evidence that the court has jurisdiction. However, a verified complaint may be treated as an affidavit if it (1) is made on personal knowledge, (2) sets forth such facts as would be admissible in evidence, and (3) shows affirmatively that the affiant is competent to testify to the matters stated therein.	"When a defendant supplements its motion to dismiss for lack of personal jurisdiction with affidavits or other supporting evidence, can the unverified allegations of a plaintiff's complaint no longer be taken as true or controlling?"	033060.docx	LEGALASE-00143951- LEGALASE-00143952	Condemned, SA, Sub 0.25	0	1	1	0	1	1
2192	Newell v. TRW/Keyser Hayes Co., 145 Ohio App. 3d 198	307+4554	A court may not dismiss a case for lack of subject-matter jurisdiction if the plaintiff has alleged any cause of action that the court has authority to decide. McKinney v. Indus. Comm. (1990), 68 Ohio App.3d 56, 62, 587 N.E.2d 414, 418-419. This determination is generally a question of law that an appellate court reviews independently of the trial court's decision. Ford v. Tandy Trnsp. Inc. (1993), 86 Ohio App.3d 364, 375, 620 N.E.2d 996, 1002-1003.	A court may not dismiss a case for lack of subject-matter jurisdiction if the plaintiff has alleged any cause of action that the court has authority to decide. McKinney v. Indus. Comm. (1990), 68 Ohio App.3d 56, 62, 587 N.E.2d 414, 418-419. This determination is generally a question of law that an appellate court reviews independently of the trial court's decision.	Can a court dismiss a case for lack of subject-matter jurisdiction if the plaintiff has alleged any cause of action that the court has authority to decide?	033110.docx	LEGALASE-00144125- LEGALASE-00144126	Condemned, SA	0.37	0	1	0	1	1
2193	Cooperwood v. Farmer, 315 F.3d 493	307+4560	"The purpose of the Rule 10(b) is to protect defendants from unnecessary delay in the service of process on them and to prevent the circumvention of the statute of limitations." Silverberg v. Hull, 2015 IL App (1st) 141321, 395 Ill. Dec. 213, 133 N.E.3d 597, 867 Ill. App.3d 2015-0196. The public policy of the statute of limitations is to protect defendants from unnecessary delay in the service of process on them and to prevent the circumvention of the statute of limitations. Ill. Sup. Ct. 11, 103(b).	The purpose of the Illinois rule of procedure allowing dismissal of action for lack of reasonable diligence in obtaining service on a defendant prior to the expiration of the applicable statute of limitations is to protect defendants from unnecessary delay in the service of process on them and to prevent the circumvention of the statute of limitations. Ill. Sup. Ct. 11, 103(b).	Is the purpose of the rule allowing dismissal of action for lack of reasonable diligence to protect defendants from unnecessary delay in the service of process on them and to prevent the circumvention of the statute of limitations?	033578.docx	LEGALASE-00143729- LEGALASE-00143730	Condemned, SA, Sub 0.67	0	1	1	1	1	1
2194	Cooperwood v. Farmer, 315 F.3d 493	307+4560	Moreover, "[t]he standard used in resolving a Rule 10(b) motion is not based on the subjective intent of the plaintiff but, rather, an objective one of reasonable diligence in effectuating service." Koe, 325 Ill. App.3d at 950, 259 Ill. Dec. 649, 759 N.E.2d 129. This is a "fact-intensive inquiry suited to balancing, not bright lines" that considers the totality of the circumstances. Silverberg, 35 N.E.3d at 967; see also Kimbrell, 651 F.3d at Ct. R. 103(b).	Under Illinois law, the standard used in resolving a motion to dismiss for lack of diligence in service of process is not based on the subjective intent of the plaintiff but, rather, an objective one of reasonable diligence in effectuating service; this is a fact-intensive inquiry suited to balancing, not bright lines that considers the totality of the circumstances. Ill. Sup. Ct. R. 103(b).	Is the trial court's determination of a plaintiff's lack of reasonable diligence in obtaining service on a defendant an objective one?	033630.docx	LEGALASE-00143905- LEGALASE-00143908	Condemned, SA, Sub 0.13	0	1	1	1	1	1

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2195	Vasquez v. New York City Police, 51 A.D.3d 781	307A-746	In order to vacate her default in appearing at a scheduled court conference, the plaintiff was required to demonstrate both a meritorious cause of action and a meritorious cause of action.	In order to vacate default in appearing at a scheduled court conference, a plaintiff is required to demonstrate both a meritorious cause of action and a meritorious cause of action.	"In order to vacate the default in appearing at a scheduled court conference, a plaintiff is required to demonstrate both a meritorious cause of action and a meritorious cause of action?"	033871.docx	LEGALCASE-00144821-LEGALCASE-00145022	Condensed, SA	0.65	889	15,344	14,873	21,876	9,079
										0	1	0	1	
2196	Clark v. Medina Gen. Hosp., 113 Ohio Misc. 2d 13	307A-560	When service of process on a defendant has not been effectuated within one year of the filing of a complaint, the proper remedy for a trial court is to dismiss the action as to any such defendant against whom the case has not commenced. The Ohio Supreme Court first came to this conclusion in 1982, when it affirmed a trial court's dismissal of an action as having never been commenced against a defendant when that defendant was served, but served after the one year "window" for service as provided in Civ.R. 3(A). The court of common pleas, according to the Supreme Court, was correct: "The action herein was never commenced as to defendant Ashley. Effective service of summons on the defendant is a necessary prerequisite to the commencement of a civil action. Civ.R. 3(A)." Id. at 6-4-65, 4 O.D.3d at 1306, 382 N.E.2d at 645.	When service of process on a defendant has not been effectuated within one year of the filing of a complaint, the proper remedy for a trial court is to dismiss the action as to any such defendant against whom the case has not commenced. The Ohio Supreme Court first came to this conclusion in 1982, when it affirmed a trial court's dismissal of an action as having never been commenced against a defendant when that defendant was served, but served after the one year "window" for service as provided in Civ.R. 3(A). The court of common pleas, according to the Supreme Court, was correct: "The action herein was never commenced as to defendant Ashley. Effective service of summons on the defendant is a necessary prerequisite to the commencement of a civil action. Civ.R. 3(A)." Id. at 6-4-65, 4 O.D.3d at 1306, 382 N.E.2d at 645.	"When service of process on a defendant has not been effectuated within one year of the filing of a complaint, the proper remedy for a trial court is to dismiss the action as to any such defendant against whom the case has not commenced. Rules Civ. Proc. Rules 3(A), 12(B)(2, 3).	Pertrial Procedure - Memo # 6584 - C - SMC.docx	R055-00288374-R055-00388825	SA, Sub	0.69	0	0	1	1	
2197	Gaudreau v. Mayo, 112 So. 3d 146	307A-563	When reviewing a case for fraud, the court should consider the proper mix of factors and carefully balance a policy favoring adjudication on the merits with competing policies to maintain the integrity of the judicial system. Because dismissal sounds the death knell of the lawsuit, courts must reserve such strong medicine for instances where the defaulting party's misconduct is correspondingly egregious... Because dismissal is a drastic remedy, courts should only resort to it in extreme circumstances. Cox v. Burke, 706 So.2d 443, 445 (Fla. 5th DCA, 1998) (quotation marks and citations omitted).	Because dismissal for fraud on court sounds death knell of lawsuit, courts must reserve such strong medicine for instances where defaulting party's misconduct is correspondingly egregious.	"Because dismissal for fraud on court sounds death knell of lawsuit, should courts reserve such strong medicine for instances where a defaulting party's misconduct is correspondingly egregious?"	Pertrial Procedure - Memo # 6584 - C - VP.docx	R055-00288374-R055-00388825	Condensed, SA	0.7	0	1	0	1	
2198	Rowen v. Le Mars Mutl. Ins. Co. of Iowa, 282 N.W.2d 639	307A-746	The trial court was well within its discretion in excluding this testimony. Pre-trial procedure is governed by rule 135-39, Iowa R.C.P. Rule 138 specifically authorizes the trial court to enter appropriate orders for the exclusion of evidence from the trial. The court has the power to exclude testimony by its own motion or on the motion of a party. Unlike the rule of discovery, there are no specific sanctions established by our pretrial rules. We nevertheless believe such power is inherent. Otherwise the rule is meaningless. Cf. Haumersen v. Ford Motor Co., 257 N.W.2d 7, 13-14 (Iowa 1977) (explaining rationale for sanctions under discovery rules).	Rule authorizing trial court to enter appropriate orders for the subsequent course of the action includes the inherent power to enforce those orders by appropriate sanctions. Rules of Civil Procedure, rule 138.	Does the rule authorizing a trial court to enter appropriate orders for the subsequent course of the action include the inherent power to enforce those orders by appropriate sanctions?	034257.docx	LEGALCASE-00144779-LEGALCASE-00144780	Condensed, SA, Sub	0.68	0	1	1	1	1
2199	State ex rel. Missouri Coal. Comm. on Admin. Rules, 519 S.W.3d 805	307A-552	A trial court properly dismisses a cause of action as moot "when the plaintiff has no longer any interest in the outcome of the lawsuit, which, if the judgment was rendered, would not have any practical effect upon any then existing controversy." C.C. Dillon Co. v. City of Eureka, 12 S.W.3d 322, 325 (Mo. banc 2000) (quotation omitted). "When an event supersedes the statute on which the litigants rely to define their rights, an appeal no longer represents an actual controversy and should be dismissed." Humane Soc'y of the U.S. v. State, 405 S.W.3d 532, 536 (Mo. banc 2013) (quotation omitted).	A trial court properly dismisses a cause of action as moot when the plaintiff has no longer any interest in the outcome of the lawsuit, which, if the judgment was rendered, would not have any practical effect upon any then existing controversy.	Can a court dismiss a cause of action as moot when the question presented for decision needs a judgment upon some matter?	034271.docx	LEGALCASE-00144791-LEGALCASE-00144791	Condensed, SA	0.62	0	1	0	1	
2200	Diaz v. Home Depot USA, 196 So. 3d 504	30-3259	We review the trial court's order under an abuse of discretion standard, although "we do so with the understanding that this standard is 'somewhat narrowed,' as it must take into account the heightened standard of 'clear and convincing evidence' upon which an order of dismissal for fraud on the court must be based." Suarez v. Benihana Int'l, Inc., 88 So.3d 343, 352 (Fla. 3d DCA 2012) (internal citations omitted).	The District Court of Appeal reviews the trial court's order dismissing an action with prejudice for fraud on the court under an abuse of discretion standard, although it does so with the understanding that this standard is somewhat narrowed, as it must take into account the heightened standard of clear and convincing evidence upon which an order of dismissal for fraud on the court must be based.	Is the standard of review narrowed to take into account that the dismissal must be established by clear and convincing evidence?	034426.docx	LEGALCASE-00143861-LEGALCASE-00143862	SA, Sub	0.06	0	0	1	1	
2201	Per Fi Firefighters Ass'n of Omaha, Local 385, AFL-CIO CLC v. City of Omaha, 287 Neb. 200	30-783111	We determine whether the resolution of the industrial dispute between Local 385 and the City has rendered this appeal concerning Commission's status quo order moot. Mootness refers to events occurring after the filing of a suit which eradicate the requisite personal interest in the resolution of the dispute that existed at the beginning of the litigation. A moot case is one which seeks to determine a question which does not rest upon existing facts or rights, in which the issues presented are no longer alive. Unless an exception applies, a court or tribunal is required to dismiss a case as moot. A case is moot if it is precluded from providing any meaningful relief because the litigants no longer have a legally cognizable interest in the dispute's resolution.	Unless an exception applies, a court must dismiss a moot case on appeal when changed circumstances have precluded it from providing any meaningful relief because the litigants no longer have a legally cognizable interest in the dispute's resolution.	Should a court dismiss a moot case if the litigants no longer have a legally cognizable interest in the dispute's resolution?	034524.docx	LEGALCASE-00144029-LEGALCASE-00144030	SA, Sub	0.68	0	0	1	1	

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2202	Rios v. Moore, 902 So. 2d 181.	302A-559	A trial court has the authority to dismiss actions based on fraud and collusion, as well as to strike sham pleadings. See Young v. Curiel, 358 So.2d 58 (Fla. 3d DCA 1978). However, this power should be "cautiously and sparingly exercised and only upon the most blatant showing of fraud, pretense, collusion or other similar wrongdoing." Id. at 55. Here, Rios voluntarily disclosed her prior accident to the Moores and agreed to produce the name of her treating physician. A review of the record indicates that Rios's explanation, along with the complete transcript of relevant testimony and medical records, indicates that she committed no fraud. Her actions were a far cry from the plaintiff's actions in Savino v. Florida Drive In Theatre Management, Inc., 697 So.2d 1011 (Fla. 4th DCA 1997), and Cox v. Burke, 706 So.2d 43 (Fla. 5th DCA 1998), cited by the Moores. Although Rios did not accurately describe her injuries, her actions did not rise to the level of fraudulent, willful or intentional conduct. Any inconsistencies or confusion in the testimony would be proper subject of cross-examination or impeachment. The detailed, thoughtful order of the trial court notwithstanding, we hold that the facts did not rise to the level of fraud or collusion as to require the court to dismiss Rios's claim. Accordingly, the order appealed from is reversed and the cause remanded to the trial court for further proceedings. See Koriblum v. Schneider, 609 So.2d 138 (Fla. 4th DCA 1992).	Trial court has the authority to dismiss actions based on fraud and collusion, as well as to strike sham pleadings, but this power should be cautiously and sparingly exercised and only upon the most blatant showing of fraud, pretense, collusion, or other similar wrongdoing.	"While trial courts have the inherent authority to dismiss actions based on fraud, should that power be used cautiously and sparingly?"	034567.docx	LEGALASE-00144135- LEGALASE-00144136	SA, Sub	0.82	0	839	15,344	14,873	21,876	9,029
	Underwood v. Alabama State Bd. of Educ., 39 So. 2d 120	307A-552	"...The declaratory judgment statutes do not empower courts to decide moot questions or to give advisory opinions, or to render judgments upon questions that have already been decided by government of future cases." Wallace v. Burlington, 361 So.2d 554, 555 (Ala.1978), quoting State ex rel. Bailey v. Johnson, 299 Ala. 69, 300 So.2d 106 (1974). See also Graddock v. McPhillips, 448 So.2d 333, 336 (Ala.1984). In deciding whether a case is moot, a court must consider "whether decision of a once living dispute continues to be justified by a sufficient prospect that the decision will have an impact on the parties." 13A.C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure 3533, at 122 (1984). "[I]f a case has become moot, or [i]f a judgment would not accomplish an end recognized as sufficient in law, there is no necessity for the judgment, the court will decline to consider the merits, and the court will dismiss the case." Chisolm v. Crook, 272 Ala. 192, 194, 130 So.2d 193 (1961)."	If a case has become moot, or if a judgment would not accomplish an end recognized as sufficient in law, there is no necessity for the judgment, the court will decline to consider the merits, and the court will dismiss the case.	"When there is no necessity for the judgment because the case has become moot, or if a judgment would not accomplish an end recognized as sufficient in law, will the court decline to consider the merits and dismiss the case?"	034596.docx	LEGALASE-00143949- LEGALASE-00143950	Condemed, SA	0.78	0	1	0	1		
2203	Schneider v. Bank of New York Mellon Tr. Co., 190 So. 3d 102	307A-563	Although this court has recognized that dismissing a case with prejudice is a drastic remedy which courts should employ only in extreme situations," see Townsend v. Feinberg, 659 So.2d 1218, 1219 (Fla. 4th DCA 1995), a trial court has the discretion to dismiss an action for an egregious violation of an order requiring that an amended complaint be filed within a certain time frame. See Chisolm v. Crook, 272 Ala. 192, 194, 130 So.2d 193 (1961). Additionally, "prior to exercising its discretion to grant dismissal based on failure to comply with a court order, the court must make a finding that the failure to comply was willful or contemptuous." Townsend, 659 So.2d at 1215; see also Taylor v. City of Lake Worth, 125 So.3d 267, 267 (Fla. 4th DCA 2013) (reversing order dismissing complaint with prejudice "because the order does not contain an express written finding of willful noncompliance for purposes of the statute"). See also Chisolm v. Crook, 272 Ala. 192, 194, 130 So.2d 193 (1961). Here, the court found that the plaintiffs had shown fraud, pretense, collusion, or other similar wrongdoing. Id. at 55. Here, Rios voluntarily disclosed her prior accident to the Moores and agreed to produce the name of her treating physician. A review of the record indicates that Rios's explanation, along with the complete transcript of relevant testimony and medical records, indicates that she committed no fraud. Her actions were a far cry from the plaintiff's error where the court fails to make an express written finding of a party willful or deliberate refusal to obey a court order." Here, the order of dismissal stated that it was entered because Bank "chose not to timely file an amended complaint," thereby satisfying the requirement of an express written finding that Bank noncompliance was indeed willful.	Does a trial court have the discretion to dismiss an action for an egregious violation of an order requiring that an amended complaint be filed within a certain time frame?	034641.docx	LEGALASE-00144631- LEGALASE-00144632	SA, Sub	0.87	0	0	1	0	1	1	
2204	Perex v. Acordia Gen. Hosp., 260 AL2d 457	307A-746	To vacate the dismissal of the complaint insofar as asserted against the appellants due to their default in appearing at a scheduled pretrial conference, the plaintiffs had to proffer evidence of a reasonable excuse for the default and a meritorious cause of action (see, Martinez v. Osis EL, 2002 AL2d 1252 (Fla. 4th DCA 1995)). See also Brown v. Ryder Truck Rental, 172 So.2d 147, 148 (Fla. 4th DCA 1978). Here, the court found that the plaintiffs had shown fraud, pretense, collusion, or other similar wrongdoing. Id. at 55. Here, Rios voluntarily disclosed her prior accident to the Moores and agreed to produce the name of her treating physician. A review of the record indicates that Rios's explanation, along with the complete transcript of relevant testimony and medical records, indicates that she committed no fraud. Her actions were a far cry from the plaintiff's error where the court fails to make an express written finding of a party willful or deliberate refusal to obey a court order." Here, the order of dismissal stated that it was entered because Bank "chose not to timely file an amended complaint," thereby satisfying the requirement of an express written finding that Bank noncompliance was indeed willful.	To vacate the dismissal of complaint due to a plaintiffs default in appearing at a scheduled pretrial conference, plaintiff must proffer evidence of a reasonable excuse for the default, and a meritorious cause of action.	Pertrial Procedure- Memo if 6896 - C- 58.docx	ROSS-00330376-ROSS-00330377	Condemed, SA, Sub 0.4	0	0	1	1	1	1	1	
2205	Simpson v. Saundhagrow Const., 965 S.W.2d 899	413-2	"Workers' compensation law is entirely a creature of statute, and thus, reviewing court is bound by general rules of statutory construction requiring that court ascertain intent of legislature by considering plain and ordinary meaning of terms and also that court give effect to such intent if possible.	Workers' compensation law is entirely a creature of statute, and what must the court give effect to?"	042003.docx	LEGALASE-00144277- LEGALASE-00144278	Condemed, SA, Sub 0.47	0	0	1	1	1	1	1	
2206	Fisher v. A.G. Becker Parth Inc., 791 L2d 693	251+78	Furthermore, the possibility that there may be some duplication from the parallel proceedings is not prejudicial to the Fishers. The Arbitration Act requires that the parties to the arbitration proceedings must first attempt to resolve their dispute through arbitration. If the parties fail to do so, the court will not be the possibly sufficient maintenance of separate proceedings in different forums. Byrd, 105 S.Ct. at 1241. See also Moses H. Cone Memorial Hospital, 440 U.S. at 20, 103 S.Ct. at 1939 ("The relevant federal law requires piecemeal resolution when necessary to give effect to an arbitration agreement").	Does the Federal Arbitration Act (FAA) require courts to compel arbitration even where the result would be the possibly inefficient maintenance of separate proceedings in different forums?	Alternative Dispute Resolution- Memo 722- 00328881	ROSS-00332860-ROSS-00332861	Condemed, SA, Sub 0.62	0	0	1	1	1	1	1	
2207															

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2208	Larus v. Bank of Commerce & Tr. Co., 149 Tenn. 126	307A-726	The executor of the will was not a party to this compromise, and did not undertake to distribute the estate until the appeal to the Court of Civil Appeals was disposed of, which was on January 22, 1920. On that date the executor was notified by the plaintiff's attorneys that the will was not valid and was being set aside. The executor then filed his complaint and other parties intervened. The judgment of the circuit court was affirmed, and the parties remained in session thereafter until April 21, 1920, without any effort being made by anyone to set aside the judgment of affirmance, or without making application to be allowed to file assignments of error. The Court of Civil Appeals adjourned on April 21, 1920, and though the time for filing a writ of error did not expire until June 14, 1921, no such application was made. The executor then moved for judgment on the ground that a constant was given ample opportunity to prosecute his contest in the circuit court. The case had been reset in that court for his accommodation, and in order that he might procure the testimony of the witness Gavin, which he did not attempt to do, and it was agreed that the case would be tried on the date to which it had been postponed. The court was therefore within its rights when it refused to grant constant a second continuance on account of the absence of the witness Gavin, and the executor was not entitled to a new trial on account of his failure to procure testimony on account of the absence of this witness. He nor his counsel could not prevent a trial of the case by withdrawing from the courtroom and refusing to introduce any testimony. If such a result could be accomplished by counsel, the trial of a case could be prevented at counsel's pleasure, and it would practically be impossible for the courts to proceed with the trial of cases.	Where the court properly refused to grant a second continuance on count of absence of a witness, neither the party applying therefor, nor his counsel, could prevent a trial of the case by withdrawing from the courtroom and refusing to introduce any testimony.	Will the court refuse to grant a second continuance on count of absence of a witness, and prevent a trial of the case by withdrawing from the courtroom and refusing to introduce any testimony?	Pretial Procedure- Memo F 5855 - C- No.docx	ROSS-003328573-ROSS-003328574	SA, Sub	0.86	839	0	15,344	14,873	21,876	1	9,029
2209	Schutte v. Johnson, 337 S.W.2d 767	307A-679	"Two methods are available to challenge a court's subject matter jurisdiction." (Id. citations omitted). The most common method is a "facial" challenge, which "makes war on the complaint itself." Is a facial challenge "asserts that the complaint, considered from top to bottom, contains no facts that would entitle the plaintiff to relief." (Id. citations omitted). The second method of attack, a "factual" challenge, differs in that it "denies that the court actually has subject matter jurisdiction as a matter of fact even though the complaint alleges facts tending to show jurisdiction." Id. at 543. The second method attacks the facts serving as the basis for jurisdiction, whereas the first questions whether the alleged facts, if accepted as true, establish grounds for subject matter jurisdiction. See id. at 542-43. The assessor's challenge to subject matter jurisdiction is not a facial challenge. We will therefore review de novo whether, accepting the facts asserted in the complaint as true, the Chancery court correctly concluded it did not have jurisdiction.	Two methods are available to challenge court's subject matter jurisdiction: most common method is "facial" challenge, which makes war on complaint itself, and facial challenge asserts that complaint, considered from top to bottom, fails to allege facts that show that court lacks subject matter jurisdiction. Second method is "factual" challenge, which differs in that it denies that court actually has subject matter jurisdiction as matter of fact, even though complaint alleges facts tending to show jurisdiction, and this method attacks the facts serving as basis for jurisdiction, whereas the first questions whether the alleged facts, if accepted as true, establish grounds for subject matter jurisdiction.	What are the methods available to challenge court's subject matter jurisdiction?	033179.docx	LEGALCASE-00145381-LEGALCASE-00145382	SA, Sub	0.37	0	0	1			1	
2210	In re Bledsoe, 41 S.W.3d 807	307A-746	However, the sanctions imposed pursuant to the court's inherent power to control its proceedings are not subject to the same standards as the discretion of the sanctions imposed under Art. I, Transamerican Nat. Gas Corp. v. Powell, 811 S.W.2d 933, 937 (Tex.1991) (orig. proceeding). To determine whether sanctions are just, we apply the standards set forth in Transamerican. Williams, 999 S.W.2d at 843. First, there must be a direct relationship between the offensive conduct and the sanction imposed. Transamerican, 811 S.W.2d at 937. This requires that the sanction be imposed on the party who engaged in the offensive conduct, not on an innocent party. Id. This prong is not met when the party seeking sanctions can show no prejudice due to the offending party's conduct. Chrysler Corp. v. Badsmom, 841 S.W.2d 844, 849 (Tex.1992) (orig. proceeding). Second, the sanction imposed must not be excessive. This prong requires trial courts to consider whether the imposition of lesser sanctions would promote compliance with the rules. Id.	For a court imposed sanction to have a direct relationship with offensive conduct, the sanction must be directed against the cause and toward the party who caused the offense. If the sanction is directed against the cause and toward the party who caused the offense, then the party seeking sanctions can show no prejudice due to the offending party's conduct.	For a court imposed sanction to have a direct relationship with offensive conduct, should the sanction be directed against the cause and toward the party who caused the offense, then the party seeking sanctions can show no prejudice due to the offending party's conduct?	Pretial Procedure- Memo F 6996 - C- No.docx	ROSS-003316998-ROSS-003316997	SA, Sub	0.72	0	0	1		1		
2211	Buckner v. Lower Florida Keys Hosp. Dist., 403 So. 2d 1025	307A-563	Although the desirable end of pleading is to create an issue and thus dispose of a cause of action on the merits, when the privilege to amend has been abused in violation of orders of court the ultimate sanction of dismissal is sometimes appropriate. Phinnett v. Mercy Hospital, Inc., 394 So.2d 441 (Fla.3d DCA 1981). This pleading effort was prolix.[FN1] The court's refusal to grant summary judgment was not an abuse of its apparent admissions of the trial court, each such move, attempt to allege a cause of action became more bloated and vitriolic. Such flagrant abuse of pleading not only demonstrates a disregard for the adversary system but a lack of professionalism and sense of responsibility as a member of the Florida Bar.	Although desirable end of pleading is to create issue and thus dispose of cause of action on merits, when privilege to amend has been abused in violation of orders of court, ultimate sanction of dismissal is sometimes appropriate.	When the privilege to amend has been abused in violation of orders of court, is the ultimate sanction of dismissal appropriate?	034842.docx	LEGALCASE-00146228-LEGALCASE-00146229	Condensed, SA	0.68	0	1	0		1		

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2212	Shen v. Time Inc. Magazine Co., 817 So. 2d 974	307A-550.1	In Del Duca v. Anthony, the Florida Supreme Court approved the Second District Court of Appeal's decision in Anthony v. Schmitt, which sets forth a two-step test for trial courts to apply when considering a dismissal for failure to prosecute, where there has been some discovery activity during the year preceding the filing of a motion to dismiss under rule 1.420(e). Anthony, 557 So.2d at 658-59, approved by, Del Duca, 587 So. 2d at 1308-09. "First, the defendant is required to show there has been no record activity for the year preceding the motion. Second, if there has been no record activity, the plaintiff has an opportunity to establish good cause why the action should not be dismissed." Id. The issue in Del Duca involved only the first step. Specifically, whether the discovery activity that had been filed in the record was not "a mere passive effort to keep the suit on the docket." 587 So.2d at 1309 (quoting Eastern Elevator, Inc. v. Page, 263 So. 2d 218, 220 (Fla.1972)). The test that emerged from Anthony allows a trial court to dismiss an action if the only activity within the year is discovery taken in bad faith and "without any effort to establish good cause why the action should not be dismissed." Del Duca, 587 So.2d at 1309 (quoting Barnett Bank of East Polk County v. Fleming, 508 So.2d 718, 720 (Fla.1987)).	Trial court may dismiss an action for failure to prosecute if the only activity within the year is discovery taken in bad faith and without any effort to establish good cause why the action should not be dismissed. West's F.S.A. RCP Rule 1.420(e).	Can a trial court dismiss an action for failure to prosecute if the only activity within the year is discovery taken in bad faith?	035257.docx	LEGALCASE-00145579-LEGALCASE-00145580	SA, Sub	0.82	839 0	15,344 0	14,873 1	21,876 1	9,029
2213	Johnson v. Elyan, 2002 WL 959318	307A-563	Independent of its express authority under Rule 165a, the trial court has inherent power under the common law to dismiss a case when the plaintiff fails to prosecute the case with due diligence. Villareal, 994 S.W.2d at 630. The conclusion that disobedience of its order was willful or consciously indifferent is sufficient basis for the trial court to impose the ultimate sanction of dismissing the case or striking pleadings and rendering judgment by default. Koslow v. Masdie, 796 S.W.2d 700, 704 (Tex.1990). A trial court's action in dismissing a lawsuit will not be reversed on appeal unless the trial court clearly abused its discretion. Veterans' Land Bd. v. Williams, 543 S.W.2d 89, 90 (Tex.1976). The trial court is entitled to consider the entire history of the case in exercising its discretion as to dismissal. State v. Rotello, 671 S.W.2d 507, 509 (Tex.1984).	The conclusion that disobedience of its order was willful or consciously indifferent is sufficient basis for the trial court to impose the sanction of dismissing the case or striking pleadings and rendering judgment by default.	"Is the conclusion that disobedience of its order was willful or consciously indifferent, a sufficient basis for a trial court to dismiss the case?"	035295.docx	LEGALCASE-00145563-LEGALCASE-00145564	Condensed, SA	0.73	0 1	0 1			
2214	Will v. Frontier Contractors, 121 Wash. App. 119	307A-563	Dismissal is an appropriate remedy where the record indicates that (1) the party's refusal to obey a court order was willful or deliberate, (2) the party's actions substantially prejudiced the opponent's ability to prepare for trial, and (3) the trial court explicitly considered whether a lesser sanction would probably have sufficed." See also Rivers, 145 Wash.2d 686, 41 P.3d 1175 (citing Burnett v. Spokane Ambulance, 131 Wash.2d 484, 494, 933 P.2d 1036 (1997)). But Washington courts do not resort to dismissal lightly. Rivers, 145 Wash.2d at 686; 41 P.3d 1175 (quoting Woodhead v. Disc. Waterbeds, Inc., 78 Wash.App. 125, 129 P.3d 896 P.2d 66 (1995)).	Dismissal is an appropriate remedy where the record indicates that (1) the party's refusal to obey a court order was willful or deliberate, (2) the party's actions substantially prejudiced the opponent's ability to prepare for trial, and (3) the trial court explicitly considered whether a lesser sanction would probably have sufficed." See also Rivers, 145 Wash.2d 686, 41 P.3d 1175 (citing Burnett v. Spokane Ambulance, 131 Wash.2d 484, 494, 933 P.2d 1036 (1997)). But Washington courts do not resort to dismissal lightly. Rivers, 145 Wash.2d at 686; 41 P.3d 1175 (quoting Woodhead v. Disc. Waterbeds, Inc., 78 Wash.App. 125, 129 P.3d 896 P.2d 66 (1995)).	When is a dismissal an appropriate remedy when indicated on the record?	Preliminary Procedure - Memo # 7314 - C - 58.docx	R055-003290026-R055-003290027	SA, Sub	0.4	0 0	0 0	1 1	1 1	
2215	Fletcher v. Univ. Hosp. of Cleveland, 172 Ohio App. 3d 153	307A-563	Therefore, we hold that the proper remedy for failure to attach the required affidavit(s) is for the defendant to request a more definite statement. If the plaintiff fails to comply with an order to provide a more definite statement, "the court may strike the pleading to which the motion was directed, or make any other orders as it deems just, which would include involuntary dismissal with prejudice. Rules Civ.Proc., Rule 121(E). 41(OB1)." Point Rental, 52 Ohio App.2d at 186; 6 O.O.3d 171, 388 N.E.2d 1367.	If the plaintiff fails to comply with an order to provide a more definite statement, the court may strike the pleading to which the motion was directed, or make any other orders as it deems just, which would include involuntary dismissal with prejudice. Rules Civ.Proc., Rule 121(E).	"If the plaintiff fails to comply with an order to provide a more definite statement, can the court strike the pleading to which the motion was directed?"	033451.docx	LEGALCASE-00145290-LEGALCASE-00145291	Condensed, SA, Sub	0.44	0 1	1 1	1 1	1	
2216	Davis v. Birch Mem'l Hosp., 628 So. 2d 1284	30+3124	The law is well settled that, under LSA-C.C.P. art. 193 and art. 1551, the trial judge is vested with much discretion in selecting appropriate sanctions for failure to comply with pretrial and discovery orders, and its choice will not be reversed absent a clear showing that it abused that discretion. Dismissal with prejudice is a severe penalty; thus it should only be imposed in extreme circumstances where the plaintiff is clearly aware that his noncompliance will result in dismissal of his action. However, where a party fails to follow a court's pretrial order, the burden is on that party to show why he failed to so comply. Allwein v. Horn, 558 So.2d 810 (La.App. 5th Cir. 1990), and cases cited therein. Also, Magni v. Westinghouse Electric, Inc., 590 So.2d 830 (La.App. 4th Cir. 1991).	Trial judge is vested with much discretion in selecting appropriate sanctions for failure to comply with pretrial and discovery orders, and its choice will not be reversed absent clear showing that it abused that discretion. LSA-C.C.P. arts. 193, 1551.	"As with discovery sanctions, is a trial court vested with much discretion in selecting appropriate sanctions for violation of a statute outlining pretrial procedure?"	Preliminary Procedure - Memo # 7413 - C - 05.docx	R055-003290065-R055-003290066	Condensed, SA, Sub	0.68	0 1	1 1	1 1	1	
2217	Newhard v. United States, 83 F. Supp. 911	34+57	There is no evidence from which the jury might find that the plaintiff was in any way dependent upon the insured, and Congress, in providing for the National Service Life Insurance, intended to provide a method for assisting by the proceeds of insurance policies those dependent to some extent upon those in active service, as defined by Section 801(c) of the Act of 1940. The action was properly dismissed.	National Service Life Insurance Act was intended to provide a method for assisting by proceeds of such policies those dependent to some extent upon those in active service. National Service Life Insurance Act of 1940, § 601(c), 38 U.S.C.A. § 801(c).	Does the National Service Life Insurance Act intend to provide a method for assisting those dependent to some extent upon those in active service by the proceeds of such policies?	Armed Services - Memo 294 - JK_57602.docx	R055-003294631-R055-003294632	Order, SA, Sub	0.39	1 0	0 0	1 1	1	

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences	
2218	United States v. Terry, 707 F.3d 607	307A+511	Yet these adjectives do not add a new element to these criminal statutes but signal that the statutory requirement must be met "that the payments were made in connection with an agreement, which is to say, "in return for official actions under it. So long as a public official agrees that payments will influence an official act, that suffices. What is needed is an agreement, full stop, which can be formal or informal, written or oral. As most bribery agreements will be oral and informal, the question is one of inferences taken from what the participants say, mean and do, all matters that juries are fully equipped to assess. "[I]nferences and consequences, not formalities, are the keys for determining whether a public official entered an agreement to accept a bribe, and the trial of fact is "quite capable of deciding the intent with which words were spoken or actions taken as well as the reasonable construction given to them by the official and the payor". Evans v. United States, 504 U.S. 255, 274, 112 S.Ct. 1881, 119 L.Ed.2d 57 (1992) (Kennedy, J., concurring in part and concurring in the judgment); see also McCormick, 500 U.S. at 270, 111 S.Ct. 1807 ("It goes without saying that matters of intent are for the jury to consider."); Ring, 706 F.3d at 488 (noting that intent "distinguishes criminal corruption from commonplace political and business activities"); United States v. Wright, 665 F.3d 560, 569 [3d Cir.2012] ("We rely on the good sense of jurors ... to distinguish intent from knowledge or recklessness where the direct evidence [of a quid pro quo] is necessarily scanty").	As most bribery agreements will be oral and informal, the question of whether alleged bribery of a public official involves the requisite payments in connection with an agreement is one of inferences taken from what the participants say, mean, and do, all matters that juries are fully equipped to assess. 18 U.S.C.A. § 201(b)(2).	"Is the question a one of inferences taken from what the participants say, mean and do or of all matters that juries are fully equipped to assess as to most bribery agreements will be oral and informal?"	Bribery - Memo #928 - C-IL-27922.docx	ROSS-003279284-ROSS-003279286	Condensed, SA, Sub	0.79	839	0	1	21,876	9,029	1
2219	Johnson v. Slavov, 27 So. 3d 176	307A+534	Dismissal with prejudice is an extreme sanction that should be reserved for those aggravating circumstances in which a lesser sanction would fail to achieve a just result. Kozel v. Osterdorf, 629 So.2d 817 (Fla.1993); but see Levine v. Del Am. Props. Inc., 642 So.2d 432 (Fla. 5th DCA 1994) (affirming an order of dismissal that detailed with particularity the disruptive and contemptuous behavior of the litigant as the reason for the sanction of dismissal and finding that the factors set forth in Kozel do not apply where the disruptive behavior is caused by the litigant and not the litigant's lawyer). While a trial court undoubtedly has discretion after due consideration of the facts and circumstances to grant or deny a motion for noncompliance with a court order, the dismissal order must contain explicit findings of willful noncompliance. See Scallan v. Marriott Int'l, Inc., 995 So.2d 1066 (Fla. 5th DCA 2008); see also Commonwealth Fed. Sav. & Loan Ass'n v. Tubero, 569 So.2d 1271 (Fla.1990). While the trial court may well have been justified in dismissing the present case with prejudice, the lack of the requisite finding of willful noncompliance in the order and the failure to consider the Kozel factors requires reversal. Id.; see also Johnson v. Slavov, 27 So. 3d 176 (Fla. 1st DCA 1994). We, therefore, reverse and remand for further consideration consistent with this opinion.	While a trial court undoubtedly has discretion after due consideration of the relevant factors to dismiss a complaint for noncompliance with a court order, the dismissal order must contain explicit findings of willful noncompliance.	"While a trial court undoubtedly has discretion after due consideration of the relevant factors to dismiss a complaint for noncompliance with a court order, should the dismissal order contain explicit findings of willful noncompliance?"	10903.docx	LEGALCASE-00094581-LEGALCASE-00094582	SA, Sub	0.83	0	0	1	1		
2220	Citizens Nat. Bank of Greater St. Louis v. Boalmen's Nat. Bank of St. Louis, 394 S.W.2d 6	307A+563	In addition, the trial court could consider the Liebermans' fugitive status and history of obstruction of the legal process. Where the facts establish willful, contemptuous disobedience for the authority of the court, applying the Kozel factors, the court may enter a judgment of dismissal, or entering judgment by default is within the trial court's discretion. Sondernam v. Marec, 694 S.W.2d 864, 866 (Mo.App.1985); Russo v. Wohls, 674 S.W.2d 695, 697 (Mo.App.1984).	When facts establish willful, contemptuous disregard and for court's authority, applying sanctions such as striking pleadings, dismissing counterclaims, or entering judgment by default within a trial court's discretion.	"Is applying sanctions such as striking pleadings, dismissing counterclaims, or entering judgment by default within a trial court's discretion?"	Perital Procedure - Memo # 7486 - C-DA-5725.docx	ROSS-003308519	SA, Sub	0.54	0	0	1	1		
2221	Bivona v. Danna & Assoc., P.C., 223 AD.3d 956	307A+561.1	"In considering a motion to dismiss for failure to state a cause of action pursuant to CPLR 3211(a)(7), the court must accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any conceivable legal theory" (Alvay v. Gaines, 909 P.2d 1011, 1012 (Colo.1996), cert. denied, 518 U.S. 1004 (2000)). Novack, LLP, 121 A.D.3d 724, 724, 995 N.Y.S.2d 728 (internal quotation marks omitted); see Leon v. Martinez, 84 N.Y.2d 83, 87-88, 614 N.Y.S.2d 972, 638 N.E.2d 511). "A motion to dismiss a cause of action pursuant to CPLR 3211(a)(1) may be granted only if "documentary evidence utterly refutes [the] plaintiff's factual allegations, thereby conclusively establishing a defense as a matter of law" (Indymac Venture, LLC v. Nageswar, 121 A.D.3d 945, 945, 995 N.Y.S.2d 145, quoting Whitebox Interactive, Inc. v. Whitebox Interactive, Inc., 2010 WL 4690700, 2010 WL 4690700, 2010 WL 4690700, 93, 936 N.Y.S.2d 439, 980 N.E.2d 487).	A motion to dismiss a cause of action based on a defense founded in documentary evidence may be granted only if documentary evidence utterly refutes plaintiff's factual allegations, thereby conclusively establishing a defense as a matter of law. McKinney's CPLR 3211(a)(1).	Will a motion to dismiss a cause of action be granted if documentary evidence refutes plaintiff's factual allegations?	10166.docx	LEGALCASE-00095509-LEGALCASE-00095510	Order, SA, Sub	0.72	1	0	1	1	1	1
2222	Tech. Chemicals & Prod. v. Home Diagnostics, Inc., 793 So. 2d 1010	307A+560.1	"Record activity" is an "act reflected in the court file that was designed to move the case forward toward a conclusion on the merits or to hasten the suit to judgment." Barnett Bank of East Polk County v. Fleming, 508 So.2d 718, 720 (Fla.1987). Activity of record of any party is sufficient to establish the one-year period in this affirmative defense. See, e.g., Fla. Bar v. The Florida Bar, 1977 WL 148, 1977 WL 148, 1977 WL 148, 363 So.2d 218 (Fla.1977); Nektareads v. Sagonas, 432 So.2d 769, 770 (Fla. 2d DCA 1983).	Activity of record of any party is sufficient to toll the one-year time period governing dismissals for failure to prosecute when it is an affirmative act directed toward the disposition of the cause. Rules Civ.Proc. Rule 1.420(e).	Is an activity of record of any party sufficient to toll the one-year time period governing dismissals for failure to prosecute when it is an affirmative act directed toward the disposition of the cause?	11188.docx	LEGALCASE-00094378-LEGALCASE-00094379	SA, Sub	0.56	0	0	1	1		

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2227	Aetna Life Ins. Co. v. Wells, 557 S.W.2d 144	156-411	Since the pre-hearing conference is limited by statute to an attempt, without the taking of testimony, to adjust and settle the claim amicably, it is clear that such conference is not a "judicial proceeding." The doctrine of judicial estoppel is applicable only when "a party to a suit alleges or admits in his pleadings in a former judicial proceeding, under oath, the contrary of the assertions sought to be made in the case then being tried." Turcotte v. Trevino, 499 S.W.2d 705, 717 (Tex.Civ.App. Corpus Christi 1973, writ affirmed, t.a.).	Doctrine of judicial estoppel is applicable only when party to suit alleges or admits in this pleading in a former judicial proceeding, under oath, the contrary of the assertions sought to be made in the case then being tried.	"Does judicial estoppel apply when a party to a suit alleges or admits in his pleadings in a former judicial proceeding, under oath, the contrary of the assertions sought to be made?"	017751.docx	LEGALASE-00149055-LEGALASE-00149056	Condensed, SA	0.58	839 0	15,344 0	14,873 0	21,876 1	9,079		
2228	XXXX v. 363 Prospect Place, 153 A.D.3d 588	307A-684	Contrary to the defendants' contention, the Supreme Court properly denied that branch of their cross motion which was pursuant to CPLR 3211(b)(1) to dismiss the complaint. "A motion pursuant to CPLR 3211(b)(1) to dismiss a complaint on the ground that a defense is founded on documentary evidence "may be appropriately granted only where the conclusively establishing a defense as a matter of law." (Attles v. Costera, 120 A.D.3d 1281, 1282, 993 N.Y.S.2d 59, quoting Goben v. Mutual Life Ins. Co. of N.Y., 38 N.Y.2d 334, 336, 748 N.Y.S.2d 858, 774 (12/20/14, 90)). Here, the parties' documentary evidence does not conclusively dispose of the plaintiffs' causes of action for a judgment declaring that it has an implied easement by preexisting use, an easement by necessity, and an easement by prescription.	A motion to dismiss a complaint on the ground that a defense is founded on documentary evidence may be appropriately granted only where the conclusively establishing a defense as a matter of law. McKinney's CPLR 3211(b)(1).	Can a motion to dismiss a complaint be granted based on documentary evidence where the evidence refutes plaintiff's factual allegations?	035762.docx	LEGALASE-00148075-LEGALASE-00148076	Condensed, SA, Sub	0.66	0 1	1 0	1 0	1 1	1		
2229	Knoche v Cox, 282 Md. 447	413-4284	This Court, long past and to the present day, has uniformly said that, aside from the exceptions created by the Act itself, the operation of the law is exclusive of all other remedy and liability, as to both the employer and employee who come within the purview of the Act, with respect to all injury arising out of and in the course of the employment. Victory Sparker Co. v. Francis, 147 Md. 368, 375, 128 A. 835 (1925) and cases cited therein.	Aside from the exceptions created by the Workmen's Compensation Act itself, the operation of the law is exclusive of all other remedy and liability, as to both the employer and employee who come within the purview of the Act, with respect to all injuries arising out of and in the course of the employment. Code 1957, art. 101, §§ 1 et seq., 15.	"Besides the exceptions created by the act itself, does the Workmen's Compensation Act provide the exclusive remedy and liability, with respect to all injuries arising out of and in the course of the employment, as to both employers and employees?"	045842.docx	LEGALASE-00148697-LEGALASE-00148698	SA, Sub	0.23	0 0	0 1	1 0	1 1	1		
2230	Wise v Shimek, 26 Vet. App. 517	34-101.1	This "unique" standard of proof is lower than any other in contemporary American jurisprudence and reflects "the high esteem in which our nation holds those who have served in the Armed Service." Gilbert, 1 Vet.App. 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.	By requiring only an approximate balance of positive and negative evidence to prove any issue material to a claim for veterans benefits, the nation, in recognition of its debt to veterans, has taken upon itself the risk of error in awarding such benefits. 38 U.S.C.A. § 5107(b).	Is an approximate balance of positive and negative evidence necessary to prove any issue material to a claim for veterans benefits?	008818.docx	LEGALASE-00149792-LEGALASE-00149793	Condensed, SA, Sub	0.78	0 1	1 0	1 0	1 0	1 1	1	
2231	Dolphin Holdings, Ltd. v. Garder & White Shipping, 122 A.D.3d 901	307A-622	A court is, of course, permitted to consider evidentiary material submitted by a defendant in support of a motion to dismiss pursuant to CPLR 3211(a)(7) (Sokol v. Leader, 74 A.D.3d 1180, 1181, 904 N.Y.S.2d 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.	On a motion to dismiss for failure to state a cause of action, the court is permitted to consider evidentiary material submitted by the defendant in support of the motion, and if it does so, the criterion then becomes whether the plaintiff has a cause of action, not whether he has stated one. McKinney's CPLR 3211(a)(7).	Is the court permitted to consider evidentiary material submitted by the defendant in support of the motion on a motion to dismiss for failure pursuant to CPLR 3211(a)(7)?	016382.docx	LEGALASE-00149253-LEGALASE-00149254	SA, Sub	0.58	0 0	1 0	1 0	1 0	1 0	1 1	1
2232	Holder v. Orange Grove Med. Specialists, P.A., 54 So. 3d 532	307A-581	The presence of an aggravating factor may serve to "bolster" or strengthen the case for a dismissal, but is not a requirement. Am. Tel. & Tel., 720 So.2d at 181. The aggravating factors include: (1) the extent to which the plaintiff was personally responsible for the delay; (2) the degree to which the plaintiff was personally responsible for the delay; (3) the degree of actual prejudice to the defendant; and (4) whether the delay was the result of intentional conduct. Cox, 976 So.2d at 876 (citing Am. Tel. & Tel., 720 So.2d at 181). We do not find any aggravating factors in this case.	Aggravating factors bolstering a motion to dismiss for want of prosecution include: (1) the extent to which the plaintiff, as distinguished from this lawsuit, was personally responsible for the delay; (2) the degree of actual prejudice to the defendant; and (4) whether the delay was the result of intentional conduct. Cox, 976 So.2d at 876 (citing Am. Tel. & Tel., 720 So.2d at 181).	"Does aggravating factors bolstering a motion to dismiss for want of prosecution, include the degree of actual prejudice to the defendant?"	018451.docx	LEGALASE-00149095-LEGALASE-00149096	Condensed, SA, Sub	0.37	0 1	1 0	1 0	1 1	1		
2233	Henderson v. Balock, 465 S.W.3d 318	307A-581	A trial court generally will consider four factors in deciding whether to grant a motion to dismiss for want of prosecution: (1) the extent to which the plaintiff was personally responsible for the delay; (2) the degree of actual prejudice to the defendant; (3) the degree of actual prejudice to the defendant; and (4) whether the delay was the result of intentional conduct. Cox, 976 So.2d at 876 (citing Am. Tel. & Tel., 720 So.2d at 181). We do not find any aggravating factors in this case.	A trial court generally will consider four factors in deciding whether to grant a motion to dismiss for want of prosecution: (1) the length of time the case has been on file; (2) the extent of activity in the case; (3) whether a trial setting was requested; and (4) the existence of reasonable excuses for the delay. Gantt, 2011 WL 1849085, at WL 1379987, at No single factor is dispositive. Jimenez v. Transwestern Prop. Co., 999 S.W.2d 125, 129 (Tex.App. Houston [14th Dist.] 1999, no pet.). The central issue is whether the plaintiff exercised due diligence in prosecuting the case, and whether the plaintiff was personally responsible for the delay. (1) the length of time the case has been on file; (2) the extent of activity in the case; (3) whether a trial setting was requested; and (4) the existence of reasonable excuses for the delay. Gantt, 2011 WL 1849085, at No single factor is dispositive. Jimenez v. Transwestern Prop. Co., 999 S.W.2d 125, 129 (Tex.App. Houston [14th Dist.] 1999, no pet.). The central issue is whether the plaintiff exercised due diligence in prosecuting the case, and whether the plaintiff was personally responsible for the delay. (1) the length of time the case has been on file; (2) the extent of activity in the case; (3) whether a trial setting was requested; and (4) the existence of reasonable excuses for the delay. Gantt, 2011 WL 1849085, at No single factor is dispositive. Jimenez v. Transwestern Prop. Co., 999 S.W.2d 125, 129 (Tex.App. Houston [14th Dist.] 1999, no pet.). The central issue is whether the plaintiff exercised due diligence in prosecuting the case, and whether the plaintiff was personally responsible for the delay. (1) the length of time the case has been on file; (2) the extent of activity in the case; (3) whether a trial setting was requested; and (4) the existence of reasonable excuses for the delay. Gantt, 2011 WL 1849085, at No single factor is dispositive. Jimenez v. Transwestern Prop. Co., 999 S.W.2d 125, 129 (Tex.App. Houston [14th Dist.] 1999, no pet.). The central issue is whether the plaintiff exercised due diligence in prosecuting the case, and whether the plaintiff was personally responsible for the delay. (1) the length of time the case has been on file; (2) the extent of activity in the case; (3) whether a trial setting was requested; and (4) the existence of reasonable excuses for the delay. Gantt, 2011 WL 1849085, at No single factor is dispositive. Jimenez v. Transwestern Prop. Co., 999 S.W.2d 125, 129 (Tex.App. Houston [14th Dist.] 1999, no pet.). The central issue is whether the plaintiff exercised due diligence in prosecuting the case, and whether the plaintiff was personally responsible for the delay. (1) the length of time the case has been on file; (2) the extent of activity in the case; (3) whether a trial setting was requested;												

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	Osgie v. Peakboard Temp. Services, 91 S.W.3d 326	307A+581	Although the trial court did not specifically cite the rule, we deem its dismissal of Mr. Osgie's wage claim to be a dismissal for failure to prosecute under rule 41.02 of the Rules of Civil Procedure. This rule is necessary to enable the court to manage its own docket, and to protect defendants against plaintiffs who are unwilling to put their claims to the test, but determined to subject them to the continuing threat of an eventual judgment. Rules Civ.Proc., Rule 41.02.	Purpose of rule governing dismissal of claim for failure to prosecute is to enable court to manage its own docket, and to protect defendant against plaintiffs who are unwilling to put their claims to the test, but determined to subject them to the continuing threat of an eventual judgment. Rules Civ.Proc., Rule 41.02.	Does the purpose of rules governing dismissal of a claim for failure to prosecute is to enable courts to manage its own docket?	035506.docx	LEGALASE-00149925-LEGALASE-00149926	SA, Sub	0.61	0	1	14,873	21,876	9,029
2234														
2235	Board of Ed. of Aberteen-Huntington Local School Dist. v. State Bd. of Ed., 116 Ohio App. 515	141E+13	General Assembly has plenary power on educational matters, and, in passing laws concerning elementary and secondary schools, is restrained only by its own conscience, fear of the electorate, and the prohibition of the constitution against release of school funds to control by religious group or sect. Const. art. 1, § 3, art. 6, § 3, 4. An examination of the Constitution reveals that the only prohibition in the Constitution against release of school funds to control by religious group or sect is, at religion, i.e., the release of public school funds to control by a religious group or sect is prohibited.	General Assembly has plenary power on educational matters, and, in passing laws concerning elementary and secondary schools, is restrained only by its own conscience, fear of the electorate, and the prohibition of the constitution against release of school funds to control by religious group or sect. Const. art. 1, § 3, art. 6, § 3, 4.	Does the General Assembly have plenary powers on educational matters?	077011.docx	LEGALASE-00150188-LEGALASE-00150189	Condensed, SA, Sub	0.46	0	1	1	1	1
2236	Washington v. City of Baton Rouge, 1959-1387 (La. App. 1 Cir. 2/23/60)	307A+581	The applicable version of LSAC-C.P. art. 561 provides that an action is considered abandoned when the parties fail to take any step in it within the time specified in the code of civil procedure. The article requires three things of the plaintiff: (1) that he take some step in the prosecution of his suit; (2) that he do so in the trial court; and (3) that he do so within five years of the last "step" taken by either party. <i>Parson v. Dagile</i> , 96-2559 (La.App. 1 Cir. 12/29/97), 708 So.2d 746.	The code of civil procedure article governing abandonment of an action requires three things of the plaintiff: (1) that he take some step in the prosecution of his suit; (2) that he do so in the trial court; and (3) that he do so within five years of the last step taken by either party. LSAC-C.P. art. 561.	What does the code of civil procedure article governing abandonment of an action require from a plaintiff?	037101.docx	LEGALASE-00150716-LEGALASE-00150717	SA, Sub	0.4	0	0	1	1	
2237	Powell v. Maryland Dept of Health, 188 A.3d 657	307A+683	When a circuit court considers a motion to dismiss a complaint for failure to state a claim, the court accepts the well-pleaded facts of the case. The court is not to take judicial notice of facts not pleaded in the complaint. The decision is in the light most favorable to the plaintiff. The court's decision is thus based on its application of the law to those facts and inferences.	When a circuit court considers a motion to dismiss a complaint for failure to state a claim, the court accepts the well-pleaded facts of the case. The court is not to take judicial notice of facts not pleaded in the complaint. The decision is thus based on its application of the law to those facts and inferences.	When a circuit court considers a motion to dismiss a complaint for failure to state a claim, does the court accept the well-pleaded facts of the complaint?	037216.docx	LEGALASE-00150756-LEGALASE-00150759	SA, Sub	0.27	0	0	1	1	
2238	Leggett v. Missouri State Life Ins. Co., 342 S.W.2d 833	371+002	Fees or charges prescribed by law to be paid by certain individuals to public officers for services rendered in connection with a specific purpose ordinarily are not taxes, 84 C.J.S. Taxation "1, p. 34; <i>Gentry v. Taxes</i> , 195 S.W.2d 672; <i>State v. Montevideo Coal Mining Co.</i> , 39 Ala.App. 318, 197 So. 82. Unless the object of the requirement is to raise revenue to be paid into the general fund of the government to defray customary governmental expenditures, <i>People v. Brooklyn Garden Apts.</i> , 283 N.Y. 373, 28 N.E.2d 877, rather than compensation of public officers for particular services rendered. <i>Cody v. Taxation</i> , Vol. 1, "33. The fees, per diem and expenses in question were not levied upon General American for the general support of the government. They were not paid into the public treasury and were not subject to disbursement for the general public need.	Under what condition can fees paid for services rendered be taxes?	Taxation - Memo # 887 - C - JL_58099.docx	LEGALASE-00150780-LEGALASE-00150781	SA, Sub	0.6	0	0	1	1		
2239	Cassie v. Cassie, 109 A.D.3d 337	1239-107	We similarly hold that, even where the conduct at issue is alleged to have occurred in a private residence, in order for a petitioner to meet his or her burden of establishing the family offense of disorderly conduct, there must be a prima facie showing that the conduct was either intended to cause, or recklessly created a risk of causing, public inconvenience, annoyance, or alarm. <i>McIntyre's Family Court Act</i> § 3812.	Even where the conduct at issue is alleged to have occurred in a private residence, in order for a petitioner to meet his or her burden of establishing the family offense of disorderly conduct, there must be a prima facie showing that the conduct was either intended to cause, or recklessly created a risk of causing, public inconvenience, annoyance, or alarm. McIntyre's Family Court Act § 3812.	Can a person on private property commit the offense of disorderly conduct?	014289.docx	LEGALASE-00151347-LEGALASE-00151348	SA, Sub	0.67	0	0	1	1	
2239														
2240	Hella Healthcare of Belleville v. Newwood, 73 N.E.3d 1185	307A+679	Section 6-219 of the Code of Civil Procedure permits a motion to dismiss when some affirmative matter, such as a lack of subject-matter jurisdiction, admits all well-pleaded facts and reasonable inferences therefrom. In such a motion, all pleadings are taken as true, and the court is to decide the case on the basis of the facts and reasonable inferences therefrom, and all pleadings are construed in the light most favorable to the moving party. <i>Reynolds v. Jimmy John's Enterprises, LLC</i> , 2013 IL App (4th) 120139, 370 Ill. Dec. 628, 988 N.E.2d 984. Our task on appeal is to determine "whether the existence of a genuine issue of material fact should have precluded the dismissal or, absent such an issue of fact, whether dismissal is proper as a matter of law." <i>Reynolds</i> , 100 Ill.2d 104, 104, 659 N.E.2d 155, 155, 104 Ill.2d 112, 116-17, 189 Ill. Dec. 31, 619 N.E.2d 732 (1993). Our standard of review is <i>de novo</i> . <i>Id.</i> at 116, 189 Ill. Dec. 31, 619 N.E.2d 732.	A motion to dismiss when some affirmative matter, such as a lack of subject matter jurisdiction, admits all well-pleaded facts and reasonable inferences therefrom. In such a motion all pleadings are construed in the light most favorable to the moving party. 735 Ill. Comp. Stat. Ann. § 5/2-619(a)(1).	"Does a motion to dismiss when some affirmative matter, such as a lack of subject matter jurisdiction, admit all well-pleaded facts and reasonable inferences therefrom?"	037138.docx	LEGALASE-00150780-LEGALASE-00150781	Condensed, SA	0.69	0	1	0	1	

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2241	Griffith & Cow Advert. v. Farmers & Merchants Bank And Tr., 215 W. Va. 428	307A4679	As indicated above, in granting Farmers & Merchants' Rule 12(b)(2) motion, the Circuit Court relied upon the pleadings and other matters of record and did not conduct an evidentiary hearing. Relevant to these syllabus points of State ex rel. Ball Atlantic West Virginia, Inc. v. Ranson, 201 W. Va. 402, 497 S.E.2d 755 (1997), which holds: When a defendant moves for summary judgment under Rule 12(b)(2) of the West Virginia Rules of Civil Procedure, the circuit court may rule on the motion upon the pleadings, affidavits and other documentary evidence or the court may permit discovery to aid in its decision. At this stage, the party asserting jurisdiction need only make a prima facie showing of personal jurisdiction in order to survive the motion to dismiss. In determining whether a party has made a prima facie showing of the most favorable inferences in the light most favorable to such party, drawing all inferences in favor of jurisdiction, the court must view the pleadings and other matters of record and not conduct an evidentiary hearing on the motion, or if the personal jurisdiction issue is litigated at trial, the party asserting jurisdiction must prove jurisdiction by a preponderance of the evidence.	In determining whether a party has made a prima facie showing of personal jurisdiction in response to motion to dismiss, the court must view the allegations in the light most favorable to such party, drawing all inferences in favor of jurisdiction. Rules Civ.Proc., Rule 12(b)(2).	"In determining whether a party has made a prima facie showing of personal jurisdiction, should the court view the allegations in the light most favorable to such party?"	Pretial Procedure - Memo # 6468 - C - MC_59167.docx	ROSS-002296723-ROSS-003261731	SA, Sub	0.77	839	15,344	14,873	21,876	3,029
										0	0	1	1	
2242	Eastwelling v. Am. Optical Corp., 207 W. Va. 123	307A4679	Ball Atlantic West Virginia, Inc. v. Ranson, 201 W. Va. 402, 497 S.E.2d 755 (1997). When a defendant files a motion to dismiss for lack of personal jurisdiction under W. Va. R. Civ. P. 12(b)(2), the circuit court may rule on the motion upon the pleadings, affidavits and other documentary evidence or the court may permit discovery to aid in its decision. At this stage, the party asserting jurisdiction need only make a prima facie showing of personal jurisdiction in order to survive the motion to dismiss. In determining whether a party has made a prima facie showing of the most favorable inferences in the light most favorable to such party, drawing all inferences in favor of jurisdiction, the court must view the pleadings and other matters of record and not conduct an evidentiary hearing on the motion, or if the personal jurisdiction issue is litigated at trial, the party asserting jurisdiction must prove jurisdiction by a preponderance of the evidence.	In determining whether a party has made a prima facie showing of personal jurisdiction, the court must view the allegations in the light most favorable to such party, drawing all inferences in favor of jurisdiction. Rules Civ.Proc., Rule 12(b)(2).	"In determining whether a party has made a prima facie showing of personal jurisdiction, should the court view the allegations in the light most favorable to such party?"	037182.docx	LEGALCASE-00150866-LEGALCASE-00150867	SA, Sub	0.74	0	0	1	1	
										0	1	1	1	1
2243	Holloway v. State, 875 N.W.2d 435	307A4679	A complaint must meet certain requirements to withstand a motion to dismiss. To prevail against a motion to dismiss for failure to state a claim, a plaintiff must allege sufficient facts, accepted as true, to state a claim, relief that is plausible on its face. In cases in which a plaintiff does not or cannot allege specific facts showing a necessary element, the factual allegations, taken as true, are nonetheless plausible if they suggest the existence of the element and raise a reasonable expectation that the existence of the element can be proven. A plaintiff's motion to dismiss for lack of facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."	A claim has facial plausibility, as required to state a claim, when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.	Does a claim have facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged?	037216.docx	LEGALCASE-00150914-LEGALCASE-00150915	Condensed, SA, Sub	0.72	0	1	1	1	1
										0	1	0	1	
2244	Signorini v. Jageria, 84 N.E.3d 869	307A4679	Motions to dismiss under section 2-605 challenge the legal sufficiency of a complaint based on defects apparent on its face. Id. at 291. 345 Ill.2d 471, 568 N.E.2d 471, 1991 WL 61471, 1991-2 U.S. App. LEXIS 10066, 1991-2 U.S. App. LEXIS 10066, 1991-2 U.S. App. LEXIS 10066, 1991-2 U.S. App. LEXIS 10066. The court must draw all reasonable inferences that may be drawn from those facts. Id. "The critical inquiry is whether the allegations of the complaint, when construed in the light most favorable to the plaintiff, are sufficient to establish a cause of action upon which relief may be granted." Kanerva v. Weems, 2014 IL 115811, 33, 383 Ill.Dec. 107, 13 N.E.3d 1228. A cause of action should not be dismissed pursuant to section 2-605 unless it is clear that no set of facts can be proven that would entitle the plaintiff to recover. Id. Our review of an order granting a section 2-615 motion to dismiss is de novo. McGinnis, 238 Ill. 2d at 291, 345 Ill.Dec. 32, 938 N.E.2d 471.	Critical inquiry on a motion to dismiss on the pleadings is whether the allegations of the complaint, when construed in the light most favorable to the plaintiff, are sufficient to establish a cause of action upon which relief may be granted. 756 Ill. Comp. Stat. Ann. § 605.	Is the critical inquiry on a motion to dismiss on the pleadings whether the allegations of the complaint are sufficient to establish a cause of action upon which relief can be granted?	037350.docx	LEGALCASE-00151042-LEGALCASE-00151043	Condensed, SA	0.71	0	1	0	1	
										0	1	0	1	
2245	Matusow v. Ziegler, 702 A.2d 1126	307A4681	To determine whether the second prong of that test is met, a separate three-part inquiry is required. First, the court must determine whether the complaint alleges facts that, if true, would entitle the plaintiff to relief. Penn Piping at 356, 603 A.2d at 1009. Second, the court must determine whether the complaint alleges facts that, if true, would entitle the plaintiff to relief. Penn Piping at 356, 603 A.2d at 1009. Third, the court must determine whether the complaint alleges facts that, if true, would entitle the plaintiff to relief. Penn Piping at 356, 603 A.2d at 1009. The court must determine whether the complaint alleges facts that, if true, would entitle the plaintiff to relief. Penn Piping at 356, 603 A.2d at 1009.	Judgment of non pros may be entered where (1) party to proceedings has shown negligence by failing to proceed with reasonable promptitude; (2) party to proceedings has shown lack of due diligence by failing to proceed with reasonable promptitude; (3) delay has caused some prejudice to adverse party.	Can judgment of non pros be entered where party to proceedings has shown lack of due diligence by failing to proceed with reasonable promptitude?	037364.docx	LEGALCASE-00151128-LEGALCASE-00151129	Condensed, SA	0.75	0	1	0	1	
										0	1	0	1	
2246	Jones v. Halliburton Co., 583 F.3d 228	257143	The one court must emerge from this analysis is that it is not specific, and concerns an issue about which courts disagree. When deciding whether a claim falls within the scope of an arbitration agreement, courts focus on factual allegations in the complaint rather than the legal causes of action asserted. "Focus on factual allegations in the complaint rather than the legal causes of action asserted." Waste Mgmt., Inc. v. Reisdios Industries Multiquim, S.A. de C.V., 372 F.3d 333, 344 (5th Cir.2004) (quotation marks and citation omitted) here, the allegations are as follows: (1) Jones was an employee of Halliburton, (2) Jones was a social gathering outside of her barracks, (3) Jones was a social gathering outside of her barracks, (4) which was some distance from where she worked, (5) at which social gathering several co-workers had been drinking (which, notably, at the time was only allowed in "non-work"	When deciding whether a claim falls within the scope of an arbitration agreement, courts focus on factual allegations in the complaint rather than the legal causes of action asserted.	Do the courts focus on factual allegations in the complaint rather than the legal causes of action asserted while deciding the scope of an arbitration agreement?	007980.docx	LEGALCASE-00151443-LEGALCASE-00151445	Condensed, SA	0.79	0	1	0	1	
										0	1	0	1	

ROW	Judicial Opinion	WKMS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
	White Eagle v. City of Fort Pierre, 2002 S.D. 68	307A+581	We have previously determined that the appropriate standard of review for a trial court's dismissal of a claim for failure to prosecute is abuse of discretion. In this case, the trial court's dismissal of the claim was based on the ground that the plaintiff failed to prosecute the claim. Under this standard, we uphold the decision. (In view of the law and the circumstances," it was reasonably made. (Citation omitted). The decision to dismiss will not stand if it is "not justified by, and clearly against, reason and evidence." Id. Additionally, the following "guiding principles of law" assist our review: First, this Court ordinarily will not interfere with the trial courts' ruling in these matters. Second, a dismissal of a claim for failure to prosecute is an abuse of discretion and should be used only when there is an unreasonable and undelayed delay. An unreasonable and undelayed delay has been defined as an omission to do something, "which the party might do and might reasonably be expected to do towards vindication or enforcement of his rights." Third, the mere passage of time is not the proper test to determine whether the delay in prosecution warrants dismissal. Fourth, the plaintiff has the burden of proving that the delay in prosecution was unreasonable and undelayed. Finally, the dismissal of the claim for failure to prosecute should be granted when, after considering all the facts and circumstances of the case, the plaintiff can be charged with lack of due diligence in failing to proceed with reasonable promptitude.	Dismissal of a cause of action for failure to prosecute should be granted when, after considering all the facts and circumstances of the case, the plaintiff can be charged with lack of due diligence in failing to proceed with reasonable promptitude. SCKL 15-11-11, 15-39-16.	When the plaintiff can be charged with lack of due diligence in failing to proceed with reasonable promptitude should dismissal of the cause of action for failure to prosecute be granted?	Petrial Procedure - Memo #8806 - C-3.docx	LEGALASE-00041503-LEGALASE-00041504	Condensed, SA	0.82	839	15_344	14,873	21,876	9,029
2247														
2248	Blockbuster Inv's LP v. Con Enterprises, 314 Ga. App. 506	307A+624	On appeal of a trial court's dismissal of a complaint, our review is de novo. A motion to dismiss should be granted only where a complaint shows with certainty that the plaintiff would not be entitled to relief under any state of facts that could be proven in support of his claim. We thus construe all the allegations in the complaint in a light most favorable to the complaining party and resolve all doubts in its favor. Furthermore, "a plaintiff is entitled to the benefit of the doubt in construing the facts and pleadings in considering a motion to dismiss for failure to state a claim for relief."	A motion to dismiss should be granted only where a complaint shows with certainty that the plaintiff would not be entitled to relief under any state of facts that could be proven in support of his claim; thus, court construes all the allegations in the complaint in a light most favorable to the complaining party and resolves all doubts in his favor. West's Ga Code Ann. § 9-11-21(b)(6).	Should a motion to dismiss be granted only where a complaint shows with certainty that the plaintiff would not be entitled to relief under any state of facts that could be proven in support of his claim?	Petrial Procedure - Memo #8806 - C-MS_59725.docx	ROSS-00382178-ROSS-003382179	SA, Sub	0.36	0	0	1	1	
2249	Matthews v. Diaz, 426 U.S. 67	24+120	The fact that all persons, aliens and citizens alike, are protected by the Due Process Clause does not lead to the further conclusion that all aliens are entitled to enjoy all the advantages of citizenship or, indeed, to the same rights and privileges as citizens. The distinction between the two classifications in U.S.C.A. Const. Amendments, 5, 14, is a legitimate distinction between citizens and aliens may justify a tribute and benefits for one class not accorded to the other; and the class of aliens is itself a heterogeneous multitude of persons with a wide-ranging variety of ties to this country.	The fact that all persons, aliens and citizens alike, are protected by the due process clause does not lead to the further conclusion that all aliens are entitled to enjoy all of the advantages of citizenship or, indeed, to the same rights and privileges as citizens. The distinction between the two classifications in U.S.C.A. Const. Amendments, 5, 14, is a legitimate distinction between citizens and aliens may justify a tribute and benefits for one class not accorded to the other; and the class of aliens is itself a heterogeneous multitude of persons with a wide-ranging variety of ties to this country.	Does the fact that aliens are protected by the Due Process Clause mean that aliens are entitled to enjoy all the advantages of citizenship?	"Aliens, Immigration and Citizenship - Memo 38 - HK_60125.docx"	ROSS-00308326-ROSS-003308527	SA, Sub	0.47	0	0	1	1	
2250	Blen v. Bank One, Akron, N.A., 35 Ohio St. 3d 98	112H+91	This, we hold that a creditor and consumer stand at arm's length in negotiating the terms and conditions of a consumer loan and, absent an understanding by both parties that a special trust and confidence has been reposed in the creditor, the creditor has no duty to disclose to the consumer the existence and details of a finder's fee or similar arrangement with a credit arranger. Accordingly, we remitate the arrangement with a credit arranger. Accordingly, we remitate the creditor for failure to fulfill a corresponding duty to disclose.	Creditor and consumer stand at arm's length in negotiating terms and conditions of consumer loan and, absent understanding by both parties that special trust and confidence has been reposed in creditor, creditor has no duty to disclose to consumer the existence and details of finder's fee or similar arrangement with credit arranger.	Do Creditor and consumer stand at arm's length in negotiating terms and conditions of consumer loan?	Consumer Credit - Memo 27_DB_60044.docx	ROSS-003298435-ROSS-003298436	Condensed, SA	0.39	0	1	0	1	
2251	Wallace v. Dunn, 3 So. 3d 1035	307A+679	In addition to misconstruing Florida law, the reasoning exhibited below improperly discounted the appropriate standard of review. "For ... purposes of a motion to dismiss for failure to state a cause of action, allegations of the complaint are assumed to be true and all reasonable inferences arising therefrom are allowed in favor of the plaintiff." Raghu v. Citicorp, 172 So.2d 1, 21 Fla. 1982. See also, State ex rel. Raghu v. Citicorp, 172 So.2d 1, 21 Fla. 1982. See also, State ex rel. Powell, 262 So.2d 881 (Fla. 1972); Popwell v. Abel, 226 So.2d 418 (Fla. 4th DCA 1969).	For purposes of a motion to dismiss for failure to state a cause of action, allegations of the complaint are assumed to be true and all reasonable inferences arising therefrom are allowed in favor of the plaintiff.	"For purposes of a motion to dismiss, are the allegations of the complaint assumed to be true and all reasonable inferences arising therefrom are allowed in favor of the plaintiff?"	037471.docx	LEGALASE-001131885-LEGALASE-001131886	Condensed, SA	0.62	0	1	0	1	
2252	Murphy v. Stonewall Kitchens, 503 S.W.3d 808	307A+679	Appellate courts review a trial court's grant of a motion to dismiss de novo. Ward v. W. City, Motor Co., Inc., 403 S.W.3d 82, 84 (Mo. banc 2013). In this case, the trial court's dismissal of the claim was based on the ground that the plaintiff failed to prosecute the claim. Under this standard, we uphold the decision. (In view of the law and the circumstances," it was reasonably made. (Citation omitted). The decision to dismiss will not stand if it is "not justified by, and clearly against, reason and evidence." Id. Additionally, the following "guiding principles of law" assist our review: First, this Court ordinarily will not interfere with the trial courts' ruling in these matters. Second, a dismissal of a claim for failure to prosecute is an abuse of discretion and should be used only when there is an unreasonable and undelayed delay. An unreasonable and undelayed delay has been defined as an omission to do something, "which the party might do and might reasonably be expected to do towards vindication or enforcement of his rights." Third, the mere passage of time is not the proper test to determine whether the delay in prosecution warrants dismissal. Fourth, the plaintiff has the burden of proving that the delay in prosecution was unreasonable and undelayed. Finally, the dismissal of the claim for failure to prosecute should be granted when, after considering all the facts and circumstances of the case, the plaintiff can be charged with lack of due diligence in failing to proceed with reasonable promptitude.	On a motion to dismiss for failure to state a claim, the petition is reviewed in an almost academic manner to determine if the plaintiff has established, by asserting the adequacy of a complaint as to which the plaintiff has a cause that might be adopted in that case.	"On a motion to dismiss for failure to state a claim, is the petition reviewed in an almost academic manner?"	037473.docx	LEGALASE-001151901-LEGALASE-001151902	Condensed, SA	0.49	0	1	0	1	
2253	J.P. Morgan Sec. Inc. v. Vigilante Inc., 21 N.Y.3d 324	307A+679	We agree that the trial court's grant of a motion to dismiss was well established. In assessing the adequacy of a complaint under CPLR § 3211(b)(7), the court must give the pleading a liberal construction, accept the facts alleged in the complaint to be true and afford the plaintiff "the benefit of every possible favorable inference." AG Capital Funding Partners, L.P. v. State St. Bank & Trust Co., 5 N.Y.3d 580, 591, 808 N.Y.S.2d 573, 862 N.E.2d 471 [2005] [internal quotation marks and citations omitted]. In this case, the trial court's dismissal of the claim was based on the ground that the plaintiff failed to prosecute the claim. Under this standard, we uphold the decision. (In view of the law and the circumstances," it was reasonably made. (Citation omitted). The decision to dismiss will not stand if it is "not justified by, and clearly against, reason and evidence." Id. Additionally, the following "guiding principles of law" assist our review: First, this Court ordinarily will not interfere with the trial courts' ruling in these matters. Second, a dismissal of a claim for failure to prosecute is an abuse of discretion and should be used only when there is an unreasonable and undelayed delay. An unreasonable and undelayed delay has been defined as an omission to do something, "which the party might do and might reasonably be expected to do towards vindication or enforcement of his rights." Third, the mere passage of time is not the proper test to determine whether the delay in prosecution warrants dismissal. Fourth, the plaintiff has the burden of proving that the delay in prosecution was unreasonable and undelayed. Finally, the dismissal of the claim for failure to prosecute should be granted when, after considering all the facts and circumstances of the case, the plaintiff can be charged with lack of due diligence in failing to proceed with reasonable promptitude.	In assessing the adequacy of a complaint as to which the plaintiff has a cause that might be adopted in that case, the petition is reviewed in an almost academic manner to determine if the plaintiff has established, by asserting the adequacy of a complaint as to which the plaintiff has a cause that might be adopted in that case.	"In assessing the adequacy of a complaint as to which the plaintiff has a cause that might be adopted in that case, should a court give the pleading a liberal construction?"	037545.docx	LEGALASE-001152909-LEGALASE-001152910	Order, SA, Sub	0.73	1	0	1	1	

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Between Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
2254	Cabot Dual v. Gursam Holding, 147 F.3d 1178	307A+683	"On a motion to dismiss pursuant to CPLR 3211(a)(7) for failure to state a cause of action, the trial court may consider the pleadings, affidavits, and any other evidence submitted. Perry, supra, at 1287. In so doing the trial court may consider not only the complaint and motion but also any affidavits or other evidence. Id. at 1287. Although the opponent of jurisdiction has the burden of establishing the failure to state a claim, the burden shifts to the movant to establish that the cause is properly before the court. Id. We will affirm the trial court's judgment on any theory supported by the evidence of record. Id.	On a motion to dismiss for failure to state a cause of action, the complaint must be construed liberally, the factual allegations deemed to be true, and inferences drawn in favor of the non-movant. Midway's CPLR 3211(a)(7).	"In reviewing a motion to dismiss for failure to state a cause of action, are the allegations of the complaint deemed to be true?"	037557.docx	LEGALISE-00152531-LEGALISE-00152532	Condensed, Order, SA	0.66	839	15,344	14,873	21,876	9,079
2255	Tapia v. Heavner, 648 N.E.2d 1202	307A+682.1	Unlike ruling on a motion for summary judgment, the trial court may weigh evidence and resolve factual disputes when ruling on a motion to dismiss for lack of subject matter jurisdiction. Perry, 637 N.E.2d at 1286. In so doing the trial court may consider not only the complaint and motion but also any affidavits or other evidence. Id. at 1287. Although the opponent of jurisdiction has the burden of establishing the failure to state a claim, the burden shifts to the movant to establish that the cause is properly before the court. Id. We will affirm the trial court's judgment on any theory supported by the evidence of record. Id.	Unlike ruling on a motion for summary judgment, trial court may weigh evidence and resolve factual disputes when ruling on motion to dismiss for lack of subject matter jurisdiction. Trial Procedure Rules 121B(1), 58(C).	"When ruling on a motion to dismiss for lack of subject matter jurisdiction, can the trial court weigh evidence and resolve factual disputes?"	037778.docx	LEGALISE-00151595-LEGALISE-00151596	SA, Sub	0.67	0	0	1	1	
2256	Davis v. Cent. Rent-A-Crane, 663 N.E.2d 1177	307A+680	When determining whether the claim should be dismissed for lack of subject matter jurisdiction, the trial court may consider the pleadings, affidavits, and any other evidence submitted. Perry, supra, at 1287. In so doing the trial court may consider not only the complaint and motion but also any affidavits or other evidence. Id. at 1287. Although the opponent of jurisdiction has the burden of establishing the failure to state a claim, the burden shifts to the movant to establish that the cause is properly before the court. Id. We will affirm the trial court's judgment on any theory supported by the evidence of record. Id.	When determining whether claim should be dismissed for lack of subject matter jurisdiction, trial court may weigh evidence to determine existence of requisite jurisdictional facts and resolve factual disputes. Trial Procedure Rules 121B(1).	"In determining whether claim should be dismissed for lack of subject matter jurisdiction, can a trial court weigh evidence to determine if requisite jurisdictional facts exist?"	Perital Procedure - Memo # 8838 - C- SJ_58615.docx	ROSS-003283718-ROSS-003283719	Condensed, SA, Sub 0.34	0	0	1	1	1	1
2257	Talkington v. Womens Servs., P.C., 7 Neb. App. 378	307A+581	In an appeal from the district court's overruling of plaintiffs' motion to rescind an order of dismissal, the Nebraska Supreme Court in Schaeffer, supra, identified four factors to consider in assessing the propriety of a dismissal for lack of prosecution: (1) the length of delay in the proceedings; (2) reasons for the delay in the proceedings; (3) whether any prejudice to the plaintiff has resulted from the delay; and (4) whether a new lawsuit would be barred by the applicable statute of limitations. See, also, Gutchenko, supra. The fact that a new lawsuit would be barred by the statute of limitations is not controlling in determining whether an abuse of discretion has occurred; instead, it is merely one of several factors to consider. Id. "Each case must be looked at with regard to its own peculiar procedural history, and the situation at the time of the dismissal." Schaeffer, 200 Neb. at 224, 263 N.W.2d at 304.	Four factors must be considered in assessing the propriety of a dismissal for lack of prosecution: (1) the length of delay in the proceedings; (2) reasons for the delay in the proceedings; (3) whether any prejudice to the plaintiff has resulted from the delay; and (4) whether a new lawsuit would be barred by the applicable statute of limitations.	Should the length of delay in the proceedings be considered in assessing the propriety of a dismissal for lack of prosecution?"	037883.docx	LEGALISE-00152067-LEGALISE-00152068	Condensed, SA	0.61	0	1	0	1	
2258	Carlson v. Reed, 249 F.3d 876	59+424(11)	We next address Carlson's due process challenge. Under Wainwright v. Kline, 412 U.S. 441, 93 S.Ct. 2230, 37 L.Ed.2d 68 (1973), as limited by Weinberger v. Salfi, 422 U.S. 749, 95 S.Ct. 2457, 45 L.Ed.2d 521 (1979), a state violates due process where it creates a university tuition rate scheme that purports to be concerned with residency, but then applies an exemption from the tuition rate to non-residents, thereby creating a financial incentive for non-residents to show factors clearly bearing on the "residency" question. Salfi, 422 U.S. at 771, 95 S.Ct. 2457. Thus, in Vlandis, the Court held that Connecticut violated the Due Process Clause of the Fourteenth Amendment where it established special rates purportedly for state "residents," but had a policy whereby individuals who started their university career as non-residents were precluded from ever showing that they had meanwhile become state residents. Vlandis, 412 U.S. at 450, 95 S.Ct. 2230.	Does a University violate due process when applies rebuttable presumptions?	Does a University violate due process when applies rebuttable presumptions?	016697.docx	LEGALISE-00152758-LEGALISE-00152759	SA, Sub	0.66	0	0	1	1	
2259	Coleman v. Lynaugh, 334 S.W.2d 837	307A+581	The standard of review is a abuse of discretion. Ametroux v. Murdock, 779 S.W.2d 119, 119 Tex.App. "Houston [1st Dist.] 1989, no writ). A judge may dismiss a case for want of prosecution "on failure of any party seeking affirmative relief to appear for any hearing or trial of which the party had notice," Tex.R. Civ. P. 166.4(1), or under his inherent powers. Veterans Land Bd. v. Williams, 543 S.W.2d 89, 90 Tex.1596).	Judge may dismiss case for want of prosecution on failure of any party seeking affirmative relief to appear for any hearing or trial of which party had notice, or under judge's inherent powers. Vernon's Ann. Texas Rules Civ.Proc. Rule 165a, subd. 1.	Can a judge dismiss a case for want of prosecution on failure of any party seeking affirmative relief to appear for any hearing or trial of which party had notice?"	Perital Procedure - Memo # 8838 - C- DA_60301.docx	ROSS-003280219-ROSS-003280220	SA, Sub	0.41	0	0	1	1	
2260	Cowen v. Bank United of Texas, 158 F.3d 937	172H+1579	In this writer of doubt we turn with relief to the staff of the Federal Reserve Board, which in "official staff commentary," to which the Supreme Court has emphatically told us to give great weight in interpreting the Truth-in-Lending Act and the regulations under it, Ford Motor Credit Co. v. Milhollin, 444 U.S. 555, 95 S.Ct. 1005, 55 L.Ed.2d 790, 799-95, 631 Ed.2d 22 (1986), has decided that "a fee for courier service charged by a settlement agent to send a document to the title company is not a charge for the use of a courier or retained charge." 12 C.F.R. pt. 226, Supp. 1, "226.4(a)" 4, 60 Fed. Reg. 1,677.1, 1,677.1 (April 3, 1995).	Federal Reserve Board's "official staff commentary" that states that the fee for courier service charged by settlement agent to send document to title company or some other party is not finance charge, provided that creditor has not required use of courier or retained the charge, is entitled to some weight as interpretation of statute, despite complaint that it was issued after transaction at issue in case. 12 C.F.R. 226, Supp. 1.	Is a fee for courier service charged by a settlement agent a finance charge?"	Consumer Credit - Memo 73 - JK_60827.docx	ROSS-00328268-ROSS-00328269	Condensed, SA, Sub 0.7	0	0	1	1	1	

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ROW	Judicial Opinion	WIKNS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
2267	Buckley by & through Buckley v Cont'l Ins., 402 P.3d1213	307A+624	"We review de novo a district court's decision on a motion to dismiss for lack of personal jurisdiction, construing the complaint "in the light most favorable to the nonmoving party and should not be granted unless, taking all well-pled allegations of fact as true, it appears beyond doubt that the plaintiffs can prove no set of facts in support of their claim which would entitle them to a judgment in their favor." 307A S.W.2d 391 (Mo.App. E.D.2001), P.3d 1433. Motion to dismiss is construed in a light most favorable to the nonmoving party and should not be granted unless, taking all well-pled allegations of fact as true, it appears beyond doubt that the plaintiffs can prove no set of facts in support of their claim which would entitle them to a judgment in their favor." 307A S.W.2d 391 (Mo.App. E.D.2001), P.3d 359. We review a district court's findings of fact and conclusions of law regarding personal jurisdiction to determine whether the findings are clearly erroneous and whether the conclusions are correct. Nolan v. RiverStone Health Care, 2017 MT 63, 9, 387 Mont. 97, 391 P.3d 95.	Motions to dismiss are construed in a light most favorable to the nonmoving party and should not be granted unless, taking all well-pled allegations of fact as true, it appears beyond doubt that the plaintiffs can prove no set of facts in support of their claim which would entitle them to a judgment in their favor.	Are motions to dismiss construed in a light most favorable to the nonmoving party?	Pretrial Procedure- Memo # 9508 - C- DA_61583.docx	ROSS-000283344-ROSS-000283345	Condensed, SA	0.71	839	15,344	14,873	21,876	9,029
2268	City of Houston v. Thomas, 838 S.W.2d 296	307A+681	"This assertion assumes that Rule 8 Civ.P. 165a(2) is the only authority for a dismissing cause for want of prosecution, when, in fact, there are three. A trial court may dismiss a case for want of prosecution (1) when a party fails to appear at a hearing or trial, when case has not been disposed of within Supreme Court's time standard, and by court's inherent power to dismiss when case has not been prosecuted with due diligence. Vernon's Ann.Texas Rules Civ.Proc., Rules 165a, 165d, subds. 1, 2, 4; Judicial Administration Rules, V.T.C.A., Government Code Title 2, Subtitle F, App. Rule 60d(2).	Motions to dismiss are construed in a light most favorable to the nonmoving party and should not be granted unless, taking all well-pled allegations of fact as true, it appears beyond doubt that the plaintiffs can prove no set of facts in support of their claim which would entitle them to a judgment in their favor.	Can court dismiss case for want of prosecution when party fails to appear at hearing or at trial?	039028.docx	LEGALCASE-00154805-LEGALCASE-00154806	SA, Sub	0.37	0	0	1	1	
2269	Wilson v. Edwards, 202 So. 34775	307A+622	"The trial court is required to give a liberal construction to the pro se motion to dismiss. The court should not construe the motion to dismiss as a complaint if it is for lack of due diligence. Duncan v. Johnson, 14 So. 2d 670, 763 (Miss. Ct.App.2009). However, "[t]he power to dismiss a frivolous complaint is distinct from a trial court's authority to dismiss for failure to state a claim under Rule 12(b)(6)." Id. A trial court has the authority to dismiss a claim based on an indisputably meritless legal theory, as well as the unusual power to pierce the veil of the complaint's allegations and to dismiss those claims whose actual facts and legal theories are clearly baseless." Id.	A trial court has the authority to dismiss a claim based on an indisputably meritless legal theory, as well as the unusual power to pierce the veil of the complaint's allegations and to dismiss those claims whose actual contentions are clearly baseless. Miss. R. Civ. P. 12(b)(6).	Does a trial court have the authority to dismiss a claim based on an indisputably meritless legal theory?	02455.docx	LEGALCASE-00155114-LEGALCASE-00155115	SA, Sub	0.58	0	0	1	1	
2270	Dinnerman v Jewish Bd. of Family & Children's Servs., 55 A.D.3d 530	307A+684	"In considering a motion to dismiss for failure to state a cause of action, the pleadings must be liberally construed. The sole criterion is whether from the complaint's four corner factual allegations are discerned which taken together manifest any cause of action cognizable at law" (Gershow v. Goldberg, 30 A.D.3d 922, 972, 87 N.Y.S.2d 615, 616 (1st Dep't. 2004), 429 N.Y.S.2d 992, 413 N.E.2d 1154; 219 Broadway Corp. v. Alexander's, Inc., 46 N.Y.2d 506, 509, 414 N.Y.S.2d 889, 387 N.E.2d 1205). However, while the allegations in the complaint are to be accepted as true when considering a motion to dismiss [see Iovoni v. Martinez, 84 N.Y.2d 83, 8798, 61 N.Y.S.2d 972, 638 N.E.2d 511], "allegations consisting of bare legal conclusions as well as factual ones are not to be accepted as true" (Gorber v. Board of Trustees of State Univ. of N.Y., 38 A.D.3d 833, 834, 834 N.Y.S.2d 203, quoting Maas v. Cornell Univ., 94 N.Y.2d 817, 91, 699 N.Y.S.2d 716, 721 N.E.2d 966).	While the allegations in the complaint are to be accepted as true when considering a motion to dismiss, factual claims fully contradicted by indisputable documentary evidence are not entitled to accept as true, then can documentary evidence result in dismissal?"	"While considering a motion to dismiss, factual claims fully contradicted by indisputable documentary evidence are not entitled to accept as true, then can documentary evidence result in dismissal?"	Pretrial Procedure- Memo # 9010 - C- BM6_61359.docx	ROSS-000282355-ROSS-000282356	Condensed, SA	0.73	0	0	0	1	
2271	Ray v. Greer, 212 N.C. 499, 356	461+684	"[I]f [a] court may enter sanctions when the plaintiff or his attorney violates the rules of civil procedure, it may also enter sanctions when the attorney enters against either the represented party or the attorney, even when the attorney is solely responsible for the delay or violation."	A trial court may enter sanctions when the plaintiff or his attorney violates the rules of civil procedure, it may also enter sanctions when the attorney enters against either the represented party or the attorney, even when the attorney is solely responsible for the delay or violation.	"Can sanctions be entered for delay or violation of court order against either the represented party or the attorney, even when the attorney is solely responsible for the delay or violation?"	039033.docx	LEGALCASE-00154817-LEGALCASE-00154818	Condensed, SA	0.39	0	1	0	1	
2272	Armistead v. A.L.W. Grp., 155 S.W.2d 814	307A+622	"[I]f [a] court may enter sanctions when the plaintiff or his attorney violates the rules of civil procedure, it may also enter sanctions when the attorney enters against either the represented party or the attorney, even when the attorney is solely responsible for the delay or violation."	A motion to dismiss for failure to state a claim is solely a test of the adequacy of the plaintiff's petition; therefore, on appeal, reviewing court accepts as true all well-pled allegations in the petition and liberally grants the plaintiff all reasonable inferences drawn therefrom.	Is a motion to dismiss for failure to state a claim solely a test of the adequacy of a plaintiff's petition?	Pretrial Procedure- Memo # 9602 - C- DA_61583.docx	ROSS-000281038-ROSS-000281039	Condensed, SA	0.71	0	1	0	1	
2273	Am. Bank & Tr. Co. of Pennsylvania v. Rifer, Todd & Haaven, 274 Pa. Super. 285	307A+681	"The test governing the entry of a judgment of non pros encompasses three considerations. First, plaintiff's delay must indicate that it has not prosecuted the matter with due diligence. Second, it must be shown there was no justification or compelling reason for the delay. Third, the delay must cause prejudice to defendant. Kennedy v. Bullen Co., 237 Pa.Super. 285, 286 (1975); Nations v. First National Bank, 360 Pa. 211, 215, 77 A.2d 993 (1951)."	Does test governing entry of judgment of non pros encompass considerations of whether plaintiff's delay indicate that it has not prosecuted the matter with due diligence, and it must be shown that there was no justification or compelling reason for the delay and, the delay must cause prejudice to defendant.	Does test governing entry of judgment of non pros encompass considerations of whether plaintiff's delay indicate that it has not prosecuted the matter with due diligence?	Pretrial Procedure- Memo # 9609 - C- SK_61594.docx	ROSS-000321825-ROSS-000321826	Condensed, SA, sub 0.33	0	1	1	1	1	

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2274	Ryan v. Dixon, 28 Ill. App. 3d 463	307A+551	The inherent power of Illinois courts to dismiss a law suit for want of prosecution is established and based on the necessity to avoid congestion in the progress of the trial calendars. <i>Bender v. Schiller</i> (1973), 9 Ill.App.3d 951, 952-53, 293 N.E.2d 411; <i>Edward v. Marcus & Chevrolet, Inc.</i> (1970), 122 Ill.App.2d 421, 426, 259 N.E.2d 344. This power, however, must be exercised by giving more weight to basic concepts of fundamental fairness and justice than to procedural matters. (<i>Boardman v. Deatur & Macon C. Hosp. Ass'n</i> (1969), 111 Ill.App.2d 384, 388, 250 N.E.2d 313.) Whether substantial justice is being done between the parties is the primary consideration. The court may not compel the other party to go to trial on the merits are stated as the overriding considerations. <i>People ex rel. Reid v. Adkins</i> (1971), 48 Ill.2d 402, 406, 270 N.E.2d 841.	Dismissal of a law suit for want of prosecution must be exercised by giving more weight to basic concepts of fundamental fairness and justice than to procedural matters. The court may not compel the other party to go to trial on the merits are stated as the overriding considerations.	Should dismissal of a law suit for want of prosecution be exercised by giving more weight to basic concepts of fundamental fairness and justice than to procedural matters?	03273.docx	LEGALISE-00155428- LEGALISE-00155429	Condensed, SA, Sub	0.6	839	15,344	14,873	21,876	9,079
2275	McDonald v. Lipov, 2014 IL App (2d) 130401	307A+684	If the document as a whole shows that the affidavit is based upon the personal knowledge of the affiant and there is a reasonable inference that the facts stated therein are true, the affidavit is sufficient to establish its veracity. <i>People v. Village of Downers Grove</i> , 897 Ill.App.3d 752, 756, 336 Ill.Dec. 864, 921 N.E.2d 478 (2009). "Prima facie authorship of a document may include a showing that the writing contains knowledge of a matter sufficiently obscure so as to be known to only a small group of individuals." <i>People v. Downin</i> , 357 Ill.App.3d 193, 203, 289 Ill.Dec. 371, 828 N.E.2d 341 (2005). It is the function of a trial court to determine the admissibility of evidence, and its rulings will not be disturbed absent an abuse of discretion. <i>People v. Williams</i> , 2014 IL App (2d) 130401, 2014 IL App.3d 941, 852, 286 Ill.Dec. 669, 814 N.E.2d 855 (2004). Here, Dr. Lipov performed the RACZ procedure at issue; his affidavit consists of facts within his personal knowledge and is therefore in compliance with Rule 129.1.	If the document as a whole shows that the affidavit is based upon the personal knowledge of the affiant and there is a reasonable inference that the facts stated therein are true, the affidavit is sufficient to establish its veracity. <i>People v. Village of Downers Grove</i> , 897 Ill.App.3d 752, 756, 336 Ill.Dec. 864, 921 N.E.2d 478 (2009). "Prima facie authorship of a document may include a showing that the writing contains knowledge of a matter sufficiently obscure so as to be known to only a small group of individuals." <i>People v. Downin</i> , 357 Ill.App.3d 193, 203, 289 Ill.Dec. 371, 828 N.E.2d 341 (2005). It is the function of a trial court to determine the admissibility of evidence, and its rulings will not be disturbed absent an abuse of discretion. <i>People v. Williams</i> , 2014 IL App (2d) 130401, 2014 IL App.3d 941, 852, 286 Ill.Dec. 669, 814 N.E.2d 855 (2004). Here, Dr. Lipov performed the RACZ procedure at issue; his affidavit consists of facts within his personal knowledge and is therefore in compliance with Rule 129.1.	When is the rule governing affidavits in support of a motion for involuntary dismissal based upon certain defects or defenses satisfied?	039334.docx	LEGALISE-00154857- LEGALISE-00154858	Condensed, SA, Sub	0.62	0	1	1	1	1
2276	PMI Multifamily Capital v. PNC Bank, National Association, et al, P.19-0304, 2020 WL 981598	307A+554	We turn to the question of personal jurisdiction. "Plaintiffs have the burden of proving facts sufficient to establish personal jurisdiction over the defendant." <i>People v. PNC Bank, National Association, et al</i> , P.19-0304, 2020 WL 981598, at *11 (N.D. Cal. 10/1/20). <i>Or App. 654, 5 P.3d 604</i> , <i>aff'd</i> on rem. <i>modification</i> <i>recons.</i> , 168 Or App. 654, 4 P.3d 741 (2000). A court may consider whether to dismiss a complaint for lack of personal jurisdiction under ORCP 21 A(2) "on the basis of facts drawn both from the complaint and 'matters outside the pleading, including affidavits, declarations and other evidence.'" <i>Black, 337 Or. at 265, 59 P.3d 1109</i> (quoting ORCP 21 A). We construe pleadings and affidavits liberally in favor of jurisdiction. <i>Stam Technical Services, Inc. v. Koresko</i> , 280 Or.App. 630, 636, 547 P.3d 1231 (2011).	A court may consider whether to dismiss a complaint for lack of personal jurisdiction on the basis of facts drawn both from the complaint and "matters outside the pleading," including affidavits, declarations and other evidence. <i>Rules Civ.Proc.</i> , Rule 21.	Can a court consider whether to dismiss a complaint for lack of personal jurisdiction on the basis of facts drawn both from the complaint and matters outside the pleading?	Prtrial Procedure - 039482.docx	ROSS-00295696-ROSS-00159697	SA, Sub	0.68	0	0	1	1	
2277	Bryant v. Smith Interier Design Grp., 2009 WL 981598	307A+685	When presented with a motion to dismiss for lack of personal jurisdiction a trial court is limited to examining the petition on its face and the supporting affidavits in determining the limited question of personal jurisdiction. At the plaintiff is not required to prove the elements forming the basis of the defendant liability, but must demonstrate that the acts alleged are true and correct. <i>People v. Smith Interier Design Grp.</i> , 2009 WL 981598, at *11 (N.D. Cal. 10/1/20).	When presented with a motion to dismiss for lack of personal jurisdiction a trial court is limited to examining the petition on its face and the supporting affidavits in determining the limited question of personal jurisdiction.	"When presented with a motion to dismiss for lack of personal jurisdiction, is a trial court limited to examining the petition on its face and the supporting affidavits in determining the limited question of personal jurisdiction?"	039482.docx	LEGALISE-00155016- LEGALISE-00155017	Condensed, SA	0.51	0	1	0	1	
2278	Brown v. Refuel Am., 186 N.C. App. 631	307A+685	Where unverified allegations in the plaintiff's complaint meet plaintiff's initial burden of proving the existence of jurisdiction and defendant does not contradict plaintiff's allegations in its sworn affidavit, such a litigation is accepted as true and deemed controlling. 11 "Wytat v. Walt Disney World Co., 551 N.C.App. 158, 362-63, 365 S.E.2d 405, 703 (2002) (quoting <i>Wytat v. Walt Disney World Co.</i> , 551 N.C.App. 158, 362-63, 365 S.E.2d 405, 703 (2002)). However, where the defendant submits an affidavit in support of his motion to dismiss for lack of personal jurisdiction, the court will "look to the uncontroverted allegations in the complaint and the uncontroverted facts in the sworn affidavit" in its determination of the issue.	Where a nonresident defendant submits an affidavit in support of his motion to dismiss for lack of personal jurisdiction, the court will look to the uncontroverted allegations in the complaint and the uncontroverted facts in the sworn affidavit in its determination of the issue. <i>West's N.C.S.A.S. 17-541</i> [6].	"Where a defendant submits an affidavit in support of his motion to dismiss for lack of personal jurisdiction, will the court look to the uncontroverted allegations in the complaint?"	039505.docx	LEGALISE-00155062- LEGALISE-00155063	SA, Sub	0.56	0	0	1	1	
2279	Gil v. Eagleton, 108 Neb. 179	322H+1273	At common law an "exchange of land" was a mutual grant of equal interest not new in value, but in integrity, as when the fee in one piece of land was exchanged for the fee in another piece of land, money, price or value was placed on either of the properties exchanged. 39 Cyc. 1181; <i>Windsor v. Collins</i> , 32 Or. 297, 52 Pac. 261; <i>Long v. Fuller</i> , <i>Adm'y</i> , 21 Wis. 121; <i>Harwell v. De Vault</i> , 159 Ill. 325, 42 N. E. 789; 2 <i>Blackstones, Commentaries</i> , 323.	At common law an "exchange of land" was a mutual grant of equal interest not new in value, but in integrity, as when the fee in one piece of land was exchanged for the fee in another piece of land, money, price or value was placed on either of the properties exchanged.	"At common law, is an exchange of land a mutual grant of equal interests that is different from a sale?"	Exchange of Property - Memo JB - Add.docx	LEGALISE-00046663- LEGALISE-00046664	Condensed, SA	0.38	0	1	0	1	
2280	Hornstein v. Wolf, 109 A.D.2d 129	307A+685	Initially, we note that unless a motion to dismiss for failure to state a cause of action is converted by the court to a motion for summary judgment, affidavits received on motions are not to be used for the purpose of determining whether there is an evidentiary dispute for the pleading.	Unless motion to dismiss for failure to state a cause of action is converted by court to a motion for summary judgment, affidavits received on motions are not to be used for the purpose of determining whether there is an evidentiary dispute for the pleading.	"Unless a motion to dismiss for failure to state cause of action is converted by court to motion for summary judgment, are affidavits submitted in support of or in opposition to motion not to be examined?"	Prtrial Procedure - Memo 10485 - C-AC-62364.docx	ROSS-00281655-ROSS-00158166	Condensed, SA	0.47	0	1	0	1	
2281	Thacker v. Bartlett, 785 N.E.2d 621	307A+690	<i>Browning v. Walters</i> , 616 N.E.2d 1040, 1044 n.2 (Ind.Ct.App.1993), modified on reh'g on other grounds, 620N.E.2d 428. A plaintiff is entitled either to amend his complaint pursuant to Trial Rule 12(E)(6) and Trial Rule 12(F)(2) or to be dismissed with prejudice. <i>People v. State, 664 N.E.2d 357, 361</i> (Ind.Ct.App.1996), <i>trans. denied</i> . Such a dismissal also does not usually operate as an adjudication on the merits and is not res judicata. See <i>Browning</i> , 616 N.E.2d at 1044; see also <i>Kokomo Med. Res Bldg. v. Papp v. William Hutchens & Assoc.</i> , 366 N.E.2d 1053, 1055 (Ind.Ct.App.1991).	A dismissal for failure to state a claim is without prejudice, since the complaining party remains able to file an amended complaint within the parameters of the rule. Trial Procedure Rule 12(B)(6).	"Is a dismissal of a complaint for failure to state a claim without prejudice, since the complaining party remains able to file an amended complaint within the parameters of the applicable rule?"	024915.docx	LEGALISE-00157337- LEGALISE-00157338	SA, Sub	0.76	0	0	1	1	

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ROW	Judicial Opinion	WKS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
2289	In re Y.M., 207 Cal. App. 4th 892	21+2031	Under these principles, federal courts have long recognized that state courts have jurisdiction over child welfare determinations, including matters pertaining to undocumented minors, absent an express federal provision to the contrary. Federal law imposes requirements on state courts as the appropriate forum for child welfare determinations regarding abuse, neglect, or abandonment, and a child's best interests. Child Abuse Prevention and Treatment Act, § 106, 42 U.S.C.A. § 5106a. Federal law imposes requirements on state dependency plans and recognizes the institutional competence of state courts as the appropriate forum for child welfare determinations regarding abuse, neglect, or abandonment, and a child's best interests." (Perez-Olino v. Gonzalez (C.D.Cal.2008) 248 F.R.D. 248, 265 (Perez-Olino); see 42 U.S.C. "" § 5106a, § 5101 et seq.) Congress expressly anticipates that a child victim of human trafficking may be in the custody of an agency of a state, or an individual or entity appointed by a juvenile court, acting in his parents' (8 U.S.C. "" § 1222(d)(5)) Federal law authorizes the federal government to assist in the removal of a child victim of human trafficking from the United States for the purpose of returning the child to his or her country of origin. (8 U.S.C. "" § 1101(a)(4)(2).) To meet its goal to assist refugee children, the federal government directs the states to provide for unaccompanied refugee children who are present in that state and to establish procedures for their care and supervision, including legal custody and/or guardianship under state law. (45 C.F.R. "" § 400.50(e) [201]; see generally, 45 C.F.R. "" § 400.1 et seq.)	Federal law imposes requirements on state dependency plans and recognizes the institutional competence of state courts as the appropriate forum for child welfare determinations regarding abuse, neglect, or abandonment, and a child's best interests. Child Abuse Prevention and Treatment Act, § 106, 42 U.S.C.A. § 5106a.	Are state courts the appropriate forum for child welfare determinations regarding neglect or abandonment of a child?	"Aliens, Immigration and Citizenship - Memo 116 - RK_64758.docx"	ROSS-003322001-ROSS-003322002	SA, Sub	0.75	839	15,344	1	21,876	9,029
2290	H.S.P. v. J.A., 223 N.J. 196, 24+179		The process for obtaining SIU status is "...a unique hybrid procedure that directs the collaboration of state and federal systems." In re Marielid N.H., 115 A.D.3d 385, 185 979 N.Y.S.2d 443 (N.Y.App.Div.2014) (quoting In re Y.Ting C., 109 A.D.3d 100, 104 909 N.Y.S.2d 150 (N.Y.2013)); E.C.D. v. P.D.R.D., 114 So.3d 36 (Ala.Cv.App.2012) (explaining that SIU statute creates "210 "a special circumstance" where a state juvenile court is the appropriate forum for child welfare determinations regarding abuse, neglect, or abandonment, and a child's best interests." (quoting In re J.C.S., 318 Ga.App. 420, 784 S.E.2d 120, 324 (2012)). The child or another individual acting on his or her behalf must first petition for "an order from a state juvenile court making findings that the juvenile satisfies certain criteria." Simbaina v. Bunney, 221 Md.App. 440, 105A.3d 191, 197-98 (Md.Ct.Spec.App.2015) (quoting In re Maritima M.'s v. Israel S., 112 A.D.3d 100, 107, 973 N.Y.S.2d 74 (N.Y.App.Div.2013)). The juvenile court must make the findings and the state juvenile court is the appropriate forum for child welfare determinations regarding abuse, neglect, or abandonment, and a child's best interests." (unpublished). The juvenile is dependent on the court or has been placed under the custody of an agency or an individual appointed by the court.(3) The "juvenile court" has jurisdiction under state law to make judicial determinations about the custody and care of juveniles;(4) That reunification with one or both of the juvenile's parents is not viable due to abuse, neglect, or abandonment or a similar basis under State law; and(5) It is not in the "best interest" of the juvenile to be returned to his or her parents or to reside with them. (8 U.S.C. "" § 1101(a)(27)(H)(i); 8 U.S.C.A. "" § 1101(a)(27)(H)(i) (amended by VPRA 2008); 204.11(a), (d)(2)(ii) (amended by VPRA 2008).	When making predicate factual findings that a juvenile seeking special immigrant juvenile (SIU) status satisfies certain criteria, a state juvenile court was required to apply New Jersey law, rather than law of foreign nation, in determining whether juvenile had been abused, neglected, or abandoned, where SIU statute required a petitioner to show that "reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, or abandonment or a similar basis under state law." Immigration and Nationality Act § 5101(a)(27)(H), 8 U.S.C.A. § 5101(a)(27)(H).	Does a juvenile court have to make a finding that reunification with one or both of the immigrant's parents is not viable for a person to be eligible for Special Immigrant Juvenile (SIU) status?	06794.docx LEGALAE-00160342- LEGALAE-00160343	1	0	1	1	0.67	1	1	1
2291	In re Y.M., 207 Cal. App. 4th 892	21+2031	Under these principles, federal courts have long recognized that state courts have jurisdiction over child welfare determinations, including matters pertaining to undocumented minors, absent an express federal provision to the contrary. Federal law imposes requirements on state courts as the appropriate forum for child welfare determinations regarding abuse, neglect, or abandonment, and a child's best interests. Child Abuse Prevention and Treatment Act, § 106, 42 U.S.C.A. § 5106a. Federal law imposes requirements on state dependency plans and recognizes the institutional competence of state courts as the appropriate forum for child welfare determinations regarding abuse, neglect, or abandonment, and a child's best interests. Child Abuse Prevention and Treatment Act, § 106, 42 U.S.C.A. § 5106a. 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	Krell v. Silver, 2008 PA Super 27	307A-657	In <i>Stephens v. Messick</i> , 799 A.2d 718 (Pa.Super.2002), this Court held that a movant must establish three factors in order to have a judgment of non pros opened: First, the petition to open must be promptly filed; second, there must be a reasonable explanation for the delay that preceded the entry of the judgment of non pros; and third, there must exist facts that would support a finding of prejudice to the non-moving party. Appellant failed to raise arguments concerning all three factors in her motion for reconsideration. For example, in her motion for reconsideration, Appellant made two arguments as to why the court should reconsider the judgment of non pros: (1) the case was listed for trial for October 18, 2001 when judgment of non pros was entered, and (2) Appellee generally did not meet all of the requirements necessary for the entry of judgment of non pros. In her brief attached to the motion for reconsideration, Appellant further explained the second argument by noting that the court's decision was based on the motion filed by Appellant's counsel in a car accident in January of 1997. Appellant was ill and house bound for all of 2000 and 2001, and numerous discovery requests were made prior to judgment of non pros being entered. Appellant also averred generally in her brief that Appellee was not prejudiced by the pre-judgment delay.	Movant must establish three factors in order to have judgment of non pros opened: (1) petition to open must be promptly filed; (2) there must be reasonable explanation for delay that preceded entry of non pros judgment; and (3) there must exist facts that would support meritorious cause of action. Rules Civ.Proc., Rule 3051, 42 Pa.C.S.A.	Should a movant establish three factors in order to have a judgment of non pros opened?	Prefiled Procedure - Memo 11305 - C - SN_54249.doc	ROSS-003294752-ROSS-003294753	Condensed, SA, Sub	0.75	839	15,344	14,873	21,876	9,029
2294										0	1	1	1	1
2295	Bowman v. Kuznick, 35 A.D.3d 613	307A-586	To vacate the dismissal of the action pursuant to CPR 321.6, the plaintiff was required to demonstrate a reasonable excuse for his default and/or meritorious cause of action (see <i>Betty v. City of New York</i> , 12 A.D.3d 4172, 473, 784 N.Y.S.2d 621; <i>Wechsler v. First Union Life Ins. Co.</i> , 295 A.D.2d 340, 341, 742 N.Y.S.2d 668). While the court may accept law office failure that is not willful or deliberate as a reasonable excuse (see <i>Reyes v. Ross</i> , 289 A.D.2d 554, 735 N.Y.S.2d 158; <i>Homenaft v. Birton</i> , 281 A.D.2d 389, 721 N.Y.S.2d 383), conclusory and unsubstantiated assertions of law office failure are insufficient. Appellant failed to establish that the court's dismissal of her action was based on a pattern of willful default and neglect with respect to her motion for reconsideration. Appellant also averred generally in her brief that Appellee was not prejudiced by the pre-judgment delay.	Although court may accept law office failure that is not willful or deliberate as a reasonable cause that warrants vacating dismissal of action for want of prosecution, conclusory and unsubstantiated assertions of law office failure are insufficient, and a pattern of willful default and neglect will not be excused. McKinney's CLR 321.6.	On motion to reinstate complaint that was dismissed for failure to timely file note of issue, can a court accept law office failure to timely file note of deliberate as a reasonable excuse for failure to timely file note of issue?	LEGASE-00159354-LEGASE-00159355		SA, Sub	0.64	0	0	1	1	
2296	Campbell v. Yonoff, 273 A.D.2d 166	307A-657	A party seeking to restore a case to the trial calendar following a dismissal pursuant to CLR 340.4 is required to demonstrate a meritorious cause of action and a lack of intent to abandon the matter. (Barguul v. Timko Contracting Corp., 262 A.D.2d 26, 27, 691 N.Y.S.2d 432; <i>Nicholas v. Cashelard Restaurant</i> , 249 A.D.2d 187, 189, 672 N.Y.S.2d 98). The AJS court denied plaintiffs motion to dismiss, finding that the affidavit of merit was insufficient, that plaintiffs took no action during 13 months immediately preceding the motion to restore, and that defendant had been prejudiced by a year-long break in discovery.	A party seeking to restore a case that has been dismissed after being marked off trial calendar must demonstrate a meritorious cause of action and a lack of intent to abandon the matter. McKinney's CLR 340.4.	A party seeking to restore a case that has been dismissed after being marked off trial calendar must demonstrate what?	LEGASE-00159485-LEGASE-00159486		SA, Sub	0.59	0	0	1	1	
2297	Murrell v. New York City Transit Auth., 260 A.D.2d 307	307A-657	Once a case is dismissed pursuant to CPR 340.4, a party seeking to restore to the trial calendar must demonstrate that the case has merit, that a reasonable excuse for the delay exists, that there was no intent to abandon and that there will be no prejudice to the non-moving party in the event the matter is restored (Ware v. Porter, 227 A.D.2d 214, 642 N.Y.S.2d 78). Here, we find that plaintiffs have sufficiently met their burden to warrant restoration of the matter to the trial calendar. When plaintiffs sought to restore their case to the trial calendar, they submitted an affidavit of merit. <i>Nicholas v. Cashelard Restaurant, Inc.</i> , 249 A.D.2d 187, 672 N.Y.S.2d 98). The affidavit of merit adequately sets forth the existence of a cause of action against defendants.	Party seeking to restore a case to the trial calendar following dismissal for abandonment must demonstrate that the case has merit, that a reasonable excuse for the delay exists, that there was no intent to abandon, and that there will be no prejudice to the non-moving party in the event the matter is restored. McKinney's CLR 340.4.	A party seeking to restore a case to the trial calendar after it has been dismissed as abandoned must demonstrate what?	LEGASE-00159503-LEGASE-00159504		SA, Sub	0.56	0	0	1	1	
2298	Rifkin v. Herman, 262 A.D.2d 389	307A-657	Under the circumstances, it was not an improvident exercise of discretion to vacate the automatic dismissal and to restore the action to the trial calendar. CLR 40.4 creates a rebuttable presumption that an action dismissed pursuant to CLR 340.4 is abandoned. The court has the discretion to exercise its power to restore the case if the movant establishes the merit of the cause of action, a reasonable excuse for the delay, lack of intent to abandon the action, and a lack of prejudice to the other party (see, <i>Drucker v. Progressive Enters.</i> , 172 A.D.2d 481, 567 N.Y.S.2d 837; <i>Malpass v. Maw's Tire Supply Corp.</i> , 143 A.D.2d 890, 533 N.Y.S.2d 397).	Court has the discretionary power to restore an abandoned case if the movant establishes the merit of the cause of action, a reasonable excuse for the delay, lack of intent to abandon the action, and a lack of prejudice to the other party. McKinney's CLR 340.4.	Does a court have the discretionary power to restore an abandoned case if the movant establishes the merit of the cause of action and a reasonable excuse for the delay?	LEGASE-00159597-LEGASE-00159598		SA, Sub	0.61	0	0	1	1	
2299	Transit Authority Corp. v. Assessor, 11 A.D.3d 1934	307A-657	With respect to the breadth of <i>Frankelberg's</i> action which was to restore the original proceeding to the trial calendar, pursuant to CPR 340.4, "[a] case in the supreme court... marked 'off' or struck from the calendar or unanswered on a clerk's calendar call, and not restored within one year thereafter, shall be deemed abandoned and shall be dismissed without costs for neglect to prosecute" (CPR 340.4). Thus, "[a] plaintiff seeking to restore a case to the trial calendar after it has been dismissed pursuant to CLR 340.4 must demonstrate a meritorious cause of action, a reasonable excuse for the delay in prosecuting the action, a lack of intent to abandon the matter, and a lack of prejudice to the defendant." (<i>Krischmar v. Queens Med. Imaging, P.C.</i> , 266 A.D.2d 417, 418, 810 N.Y.S.2d 483 (emphasis added)).	When action, which was marked off trial calendar and not restored within one year, has been dismissed, plaintiff seeking to restore case to trial calendar must demonstrate a meritorious cause of action, a reasonable excuse for the delay in prosecuting the action, a lack of intent to abandon the action, and a lack of prejudice to the defendant. McKinney's CLR 340.4.	Can an action which has been deemed abandoned as a result of having been marked off or stricken from a calendar thereafter be restored?	LEGASE-00159519-LEGASE-00159520		Condensed, SA, Sub	0.55	0	1	1	1	1
2300	Koch v. Lavorne, 699 So. 2d 164	307A-583	"[I]f the dismissal of a party's case and the subsequent refusal to set aside the denial for want of prosecution rests largely within the sound discretion of the trial court, the dismissal of a party's case and subsequent refusal to set aside the denial for want of prosecution rest largely within the sound discretion of a trial court."	Dismissal of party's case and subsequent refusal to set aside dismissal for want of prosecution rests largely within sound discretion of trial court.	Does the dismissal of a party's case and subsequent refusal to set aside dismissal for want of prosecution rest largely within the sound discretion of a trial court?	Prefiled Procedure - Memo 11324 - C - n_54260.doc	ROSS-003294146-ROSS-003294147	Condensed, SA	0.69	0	1	0	1	

ROW	Judicial Opinion	WIMS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement Differences	Multiple Differences	
2301	Northside Realty Assoc. v. Peatthree Morig. Corp. 239 Ga. 62	275+116.2	The entry of a supplemental order making findings of fact and conclusions of law, pursuant to Code Ann. §81A-132, does not change the effect of a final order dismissing a complaint, but merely sets out the basis for the judgment of dismissal as such findings of fact and conclusions of law. The entry of a supplemental order making findings of fact and conclusions of law is not a proper exercise of the court's authority to grant a new trial. Code Ann. §81A-132 was 30 days from the entry of the supplemental order setting out findings of fact and conclusions of law.	Entry of a supplemental order making findings of fact and conclusions of law does not change effect of a final order dismissing a complaint, but merely sets out the basis for the judgment of dismissal as such findings of fact and conclusions of law. The entry of a supplemental order making findings of fact and conclusions of law is not a proper exercise of the court's authority to grant a new trial. Code, § 81A-132(b).	Does entry of a supplemental order making findings of fact and conclusions of law not change effect of a final order dismissing a complaint?	039871.docx	LEGALASE-00159677-LEGALASE-00159678	Condensed SA	0.26	839	1	34,873	21,876	9,029	
	Winn v. Armour & Co., 184 Ga. 769	307A+693.1	Dismissal of an action for want of prosecution, where the defendant has filed an action seeking summary judgment, does not constitute a dismissal of the case. The defendant's motion for summary judgment is considered in the preceding. Accordingly, dismissal of the equitable petition brought by Edson and others, judgment creditors of Mrs. Atherton, the assignor of the judgment and execution involved in this case, against her, against the assignee of the execution, Frank Winn, and against the judgment defendant, Armour & Co., to which all of the defendants answered, and Armour & Co. filed a cross-action seeking the judgment rendered, and seeking to enjoin the assignee of the judgment, Winn, from enforcing the same, was not dismissed in so far as the issues raised by the cross-action of Armour & Co. were concerned.	The dismissal of an action for want of prosecution does not dismiss issues raised by cross-petition. Instead, seeking equitable relief, even though it will "affect" certain order renders.	"Does the dismissal of an action for want of prosecution not dismiss issues raised by cross-petition filed by a defendant seeking equitable relief, even though it will "affect" certain order renders?"	039877.docx	LEGALASE-00159722-LEGALASE-00159723	Condensed SA, Sub	0.81	0	1	1	1	1	
2302	Albright v. 99 Morgan Chase Bank, N.A., 391 Ill. App. 3d 334	307A+661.1	While a trial court should grant such a motion unless it is clear that there is no way a plaintiff may recover (see Osterdick v. International Harvester Co., 89 Ill.2d 273, 280, 60 Ill.D.C. 466, 633 N.E.2d 353 (1982)), dismissing a case pursuant to §619 efficiently allows for the disposal of issues of law or easily proved facts early in the litigation process. See Coles "Moultree Electric Cooperative v. City of Sullivan, 304 Ill.App.3d 153, 158, 237 Ill.D.C. 263, 709 N.E.2d 489 (1999).	While a trial court should grant a motion to dismiss based on certain defects, it dismisses unless it is clear that there is no way a plaintiff may recover, dismissing a case pursuant to such a motion efficiently allows for the disposal of issues of law or easily proved facts early in the litigation process. S.H.A. 735 (LC5 5/2-619).	Will a court grant a motion to dismiss based on certain defects or defenses?	039915.docx	LEGALASE-00159651-LEGALASE-00159656	SA, Sub	0.33	0	0	1	1	1	
	Whelan v. Mayan Palace Hotel & Resorts, 397 N.J. Super. 257	307A+697	We review the trial court's decision on the reinstatement motion for abuse of discretion. Grand v. Crespelpe, 390 N.J. Super. 193, 196, 915 A.2d 39 (App.Div.2007). Following a dismissal for lack of prosecution, Rule 1:13-7(a) permits reinstatement of a complaint "on motion for good cause shown." "Good cause" is "an amorphous term, that is, it is difficult of precise delineation. Its application requires the exercise of sound judgment in the context of the purposes of the Court Rule being applied." Rule 1:13-7(d) is an administrative rule "designed to clear the docket of cases that cannot, for various reasons, be prosecuted to completion." Dismissals under the rule are "without prejudice." R. 1:13-7(a). Accordingly, the right to "reinstatement is ordinarily routinely and freely granted when plaintiff has cured the problem that led to the dismissal even if the application is made many months later."	The right to reinstatement is ordinarily routinely and freely granted when plaintiff has cured the problem that led to dismissal for lack of prosecution even if the application is made many months later. Rule 1:13-7(a).	Is the right to reinstatement ordinarily routinely and freely granted when a plaintiff has cured the problem that led to the dismissal?	039902.docx	LEGALASE-00159693-LEGALASE-00159694	SA, Sub	0.78	0	0	1	1	1	
2303	United States v. Fleming, 671 F.2d 1002	110+1184(4.1)	A reviewing court may not change or reduce a sentence imposed within the applicable statutory limits on the ground that the sentence was too severe unless the trial court relied on improper or unreliable information in exercising its discretion or failed to exercise any discretion at all in imposing the sentence.	Reviewing court may not change or reduce sentence imposed within applicable statutory limits on ground that sentence was too severe unless trial court relied on improper or unreliable information in exercising its discretion or failed to exercise any discretion at all in imposing the sentence.	Can the court change or reduce a sentence imposed with the applicable statutory limits on the grounds that the sentence was too severe?	012533.docx	LEGALASE-00161543-LEGALASE-00161544	Condensed SA	0.51	0	1	0	1	1	1
	United States v. Taylor, 569 F.3d 742	139A+66	The Double Jeopardy Clause of the United States Constitution bars a defendant's retrial unless the district court declared a mistrial either (1) with the defendant's consent, or (2) because the declaration was mandated by the U.S.C.A. Code.	Double Jeopardy Clause of the United States Constitution bars a defendant's retrial unless the district court declared a mistrial either (1) with the defendant's consent, or (2) because the declaration was mandated by the U.S.C.A. Code.	Does the Double Jeopardy Clause of the United States Constitution bar a defendant's retrial unless the district court declared a mistrial?	016057.docx	LEGALASE-00160787-LEGALASE-00160788	SA, Sub	0.08	0	0	1	1	1	1
2305	Hewitt v. Booth Men's Med. Ctr., 178 A.D.2d 401	307A+697	On appeal, the defendants contend that the Supreme Court improvidently exercised its discretion in restoring this action to the trial calendar because the surviving plaintiff failed to rebut the presumption of abandonment which is created by CPLR 3404 when an action is marked off the trial calendar and is not restored within one year. We agree. A party seeking to reinstate an action must demonstrate the merits of the case, a reasonable excuse for the delay, the absence of an intent to abandon the matter, and the lack of prejudice to the nonmoving party in the event that the case is restored to the calendar (see, Gray v. Sandoz Pharms., 158 A.D.2d 583, 551 N.Y.S.2d 551; Malpass v. Mavis Tire Supply Corp., 143 A.D.2d 800, 533 N.Y.S.2d 4397; Tucker v. Hotel Employees & Rest. Employees Union, 134 A.D.2d 459-521 N.Y.2d 62729). The surviving plaintiff failed to demonstrate the merits of the case, a reasonable excuse for the delay, the absence of an intent to abandon the matter, and the lack of prejudice to the nonmoving party in the event that the case is restored to the calendar (see, Gray v. Sandoz Pharms., 158 A.D.2d 583, 551 N.Y.S.2d 551; Malpass v. Mavis Tire Supply Corp., 143 A.D.2d 800, 533 N.Y.S.2d 4397; Tucker v. Hotel Employees & Rest. Employees Union, 134 A.D.2d 459-521 N.Y.2d 62729). The surviving plaintiff failed to demonstrate the merits of the case, a reasonable excuse for the delay, the absence of an intent to abandon the matter, and the lack of prejudice to the nonmoving party in the event that the case is restored to the calendar (see, Gray v. Sandoz Pharms., 158 A.D.2d 583, 551 N.Y.S.2d 551; Malpass v. Mavis Tire Supply Corp., 143 A.D.2d 800, 533 N.Y.S.2d 4397; Tucker v. Hotel Employees & Rest. Employees Union, 134 A.D.2d 459-521 N.Y.2d 62729). The surviving plaintiff failed to demonstrate the merits of the case, a reasonable excuse for the delay, the absence of an intent to abandon the matter, and the lack of prejudice to the nonmoving party in the event that the case is restored to the calendar (see, Gray v. Sandoz Pharms., 158 A.D.2d 583, 551 N.Y.S.2d 551; Malpass v. Mavis Tire Supply Corp., 143 A.D.2d 800, 533 N.Y.S.2d 4397; Tucker v. Hotel Employees & Rest. Employees Union, 134 A.D.2d 459-521 N.Y.2d 62729). The surviving plaintiff failed to demonstrate the merits of the case, a reasonable excuse for the delay, the absence of an intent to abandon the matter, and the lack of prejudice to the nonmoving party in the event that the case is restored to the calendar (see, Gray v. Sandoz Pharms., 158 A.D.2d 583, 551 N.Y.S.2d 551; Malpass v. Mavis Tire Supply Corp., 143 A.D.2d 800, 533 N.Y.S.2d 4397; Tucker v. Hotel Employees & Rest. Employees Union, 134 A.D.2d 459-521 N.Y.2d 62729). The surviving plaintiff failed to demonstrate the merits of the case, a reasonable excuse for the delay, the absence of an intent to abandon the matter, and the lack of prejudice to the nonmoving party in the event that the case is restored to the calendar (see, Gray v. Sandoz Pharms., 158 A.D.2d 583, 551 N.Y.S.2d 551; Malpass v. Mavis Tire Supply Corp., 143 A.D.2d 800, 533 N.Y.S.2d 4397; Tucker v. Hotel Employees & Rest. Employees Union, 134 A.D.2d 459-521 N.Y.2d 62729). The surviving plaintiff failed to demonstrate the merits of the case, a reasonable excuse for the delay, the absence of an intent to abandon the matter, and the lack of prejudice to the nonmoving party in the event that the case is restored to the calendar (see, Gray v. Sandoz Pharms., 158 A.D.2d 583, 551 N.Y.S.2d 551; Malpass v. Mavis Tire Supply Corp., 143 A.D.2d 800, 533 N.Y.S.2d 4397; Tucker v. Hotel Employees & Rest. Employees Union, 134 A.D.2d 459-521 N.Y.2d 62729). The surviving plaintiff failed to demonstrate the merits of the case, a reasonable excuse for the delay, the absence of an intent to abandon the matter, and the lack of prejudice to the nonmoving party in the event that the case is restored to the calendar (see, Gray v. Sandoz Pharms., 158 A.D.2d 583, 551 N.Y.S.2d 551; Malpass v. Mavis Tire Supply Corp., 143 A.D.2d 800, 533 N.Y.S.2d 4397; Tucker v. Hotel Employees & Rest. Employees Union, 134 A.D.2d 459-521 N.Y.2d 62729). The surviving plaintiff failed to demonstrate the merits of the case, a reasonable excuse for the delay, the absence of an intent to abandon the matter, and the lack of prejudice to the nonmoving party in the event that the case is restored to the calendar (see, Gray v. Sandoz Pharms., 158 A.D.2d 583, 551 N.Y.S.2d 551; Malpass v. Mavis Tire Supply Corp., 143 A.D.2d 800, 533 N.Y.S.2d 4397; Tucker v. Hotel Employees & Rest. Employees Union, 134 A.D.2d 459-521 N.Y.2d 62729). The surviving plaintiff failed to demonstrate the merits of the case, a reasonable excuse for the delay, the absence of an intent to abandon the matter, and the												

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2309	Staiff v. Barnick, 387 P.3d 636	307A-695	Further, unlike granting a motion for summary judgment, the trial court's granting of a motion to dismiss may or may not be dispositive of a plaintiff's claim against a defendant. A trial court has a mandatory duty pursuant to IS O.S. 2011.2012(G) to grant leave to amend when a party fails to plead its claims properly. See <i>Fanning v. Brown</i> , 2004 OK 7, 23, 85 P.3d 641. Therefore, for a trial court to dismiss a claim for failure to state a cause of action without granting leave to amend would be tantamount to a finding that the claim does not exist rather than the claim has been defectively stated". Is, if the trial court concludes a claim does not exist, its order must "contain a statement that no amendment of the petition could cure the defects in [Plaintiff's] petition." Id.; see also <i>Pellison v. State ex rel. Board of Regents</i> , 2015 OK CIV APP 70, ¶38 P.3d 288.	If the trial court, in granting a motion to dismiss, concludes a claim does not exist, its order must contain a statement that no amendment of the petition could cure the defects in the plaintiff's petition.		040116.docx	LEGALASE-00161452- LEGALASE-00161453	Condemned, Other, SA	0.76	1	1	0	21,876	1
2310	Town of Micanoy v. Cornell, 304 So. 2d 478	307A-695	Rule 1.190 F.R.C.P., provides that leave to amend a pleading shall be freely given when justice so requires. This is generally interpreted to allow a plaintiff to at least amend his complaint one time in an attempt to state a cause of action unless, of course, it is clear that a plaintiff will not be able to state a cause of action. As this court stated in <i>Brown v. Montgomery Ward and Company, Fla.Apt.(1st)</i> , 252 So. 2d 817, doubts should be resolved in favor of allowing amendments, unless and until it appears that the plaintiff cannot possibly state a cause of action. The father said, "The court may, in its discretion, deny any party the right to amend his pleadings if the proposed amendments will change or introduce new issues or materially vary the grounds for relief, or where the filing of such pleadings will delay this suit by necessarily requiring a continuance under circumstances which would be unduly prejudicial to the opposing party...."	Rule which provides that leave to amend a pleading shall be freely given when justice so requires is interpreted to allow a plaintiff to at least amend his complaint one time in an attempt to state a cause of action, unless it is clear that a plaintiff will not be able to state a cause of action. 30 West's F.S.A. Rules of Civil Procedure, rule 1.190.	Does the rule require leave to amend to be freely given when justice requires?	Petrial Procedure - Memo 11609 - C - SWG_65625.docx	RSS-00328264-R055- 003282645	Condemned, Sub	0.64	1	1	1	1	1
2311	Nevada Interstate Properties Corp. v. City of W. Palm Beach, 747 So. 2d 447	307A-695	Nevada's original complaint with prejudice without affording Nevada the opportunity to amend in an effort to cure defects in its pleadings. It is well settled that a dismissal with prejudice for failure to state a cause of action should not be ordered without giving the party offering the defective pleading an opportunity to amend, unless it is apparent that the pleading cannot be amended as to state a cause of action.	Dismissal with prejudice for failure to state a cause of action should not be ordered without giving the party offering the defective pleading an opportunity to amend, unless it is apparent that the pleading cannot be amended as to state a cause of action.	Should a dismissal with prejudice for failure to state a cause of action not be ordered without giving the party offering the defective pleading an opportunity to amend?	040261.docx	LEGALASE-00160845- LEGALASE-00160846	Condemned, SA	0.47	0	1	0	1	1
2312	People v. Kruger, 2015 IL App (4th) 131080	307A-683	Under Illinois law, trial courts have the power to dismiss civil actions "for irreparable delay and lack of diligence," which is referred to as a "dismissal for want of prosecution." <i>City of Crystal Lake v. Sak</i> , 52 Ill.App.3d 684, 688, 10 Ill.Doc. 380, 367 N.E.2d 985, 989 (1977). Moreover, as previously stated, this court has held a trial court may dismiss a case for want of prosecution when the petitioner has failed to properly serve the writ of protection on the respondent within the time specified in Rule 4(b), (4)(b) 110168, 14, 364 Ill.Dec. 545, 976N.E.2d 105. The determination of whether or not to dismiss a case for want of prosecution is governed by the particular facts of the case and rests within the trial court's sound discretion. Department of Revenue v. Steinkopf, 160 Ill.App.3d 1008, 1018, 112 Ill.Dec. 407, 512 N.E.2d 106, 102-2 (1987).	A trial court may dismiss a case for want of prosecution when the petitioner has failed to properly serve the opposing party within a reasonable period of time.	Can a court dismiss a case for want of prosecution when the petitioner has failed to properly serve the opposing party within a reasonable period of time?	040688.docx	LEGALASE-00160505- LEGALASE-00160506	Condemned, SA	0.81	0	1	0	1	1
2313	Holladay v. Navree, 888 So. 2d 275	307A-683	The trial court did not expressly rule on the mother's motion to dismiss the father's petition. However, the report of the court's denying the father's motion for a continuance and its failure to address any of the father's claims in its January 31, 2009, judgment was to grant a dismissal of the father's petition for failure to prosecute, pursuant to Rule 41(b). Ala. R. Civ. P. "The dismissal of a civil action for want of prosecution because of the plaintiff's failure to appear at trial falls within the judicial discretion of a trial court and are will not be reversed upon an appeal except for abuse of discretion." <i>Ex parte Smith</i> , 464 So.2d 105, 106 (Ala.Civ.App.1985). Although dismissal is a harsh sanction, it is warranted where there is a clear record of delay, willful default or contumacious conduct by the plaintiff. Jones v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 604 So.2d 332, 341 (Ala.1991). Because the trial judge is in the best position to assess the conduct of the plaintiff, the trial court's "decision to grant a motion to dismiss for failure to prosecute will be accorded considerable weight by a reviewing court." Id.	The dismissal of a civil action for want of prosecution because of the plaintiff's failure to appear at trial falls within the judicial discretion of a trial court and will not be reversed upon an appeal except for an abusive use of that discretionary power.	Will the dismissal of a civil action for want of prosecution because of the plaintiff's failure to appear at trial be reversed?	Petrial Procedure - Memo 11702 - C - SWG_65421.docx	RSS-00328286-R055- 003282866	Condemned, SA	0.78	0	1	0	1	1
2314	Ben Robinson Co. v. Teaks Workers' Comp. Comm'n, 934 S.W.2d 149	413-106	Applying the mootness doctrine in a case such as this one would effectively prevent employees from obtaining judicial review of constitutional challenges to the Program indeed, in this case the Company's extra-hazardous designation was lifted even before the trial court ruled on the issue. In light of this, we conclude that the employer's extra-hazardous status renders it nearly impossible for an employer to obtain judicial review while that status remains pending, we would hold that this case falls within the "capable of repetition yet evading review" exception to the mootness doctrine. See <i>State v. Lodge</i> ,	Even if employer's appeal from its designation as extra-hazardous was rendered moot by lifting of designation by the Workers' Compensation Commission, appeal fell within the "capable of repetition yet evading review" exception to the mootness doctrine because short duration of the designation and the fact that the employer's designation as extra-hazardous status renders it nearly impossible for an employer to obtain judicial review while that status remains pending. V.T.C.A., Labor Code §§ 411.04-3(a), 411.04(5); Tex.Admin. Code title 28, §§ 164.3(a), 164.5(g).	How would the capable of repetition yet evading review exception to impact an extra-hazardous designation?	048713.docx	LEGALASE-00161403- LEGALASE-00161404	Condemned, SA, Sub	0.21	0	1	1	1	1

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	State v. Murphy, 545 N.W.2d 909	3.77+11	We also reject Murphy's interpretation of the terrorist threats statute because limiting the reach of the statute to oral or written threats would lead to an absurd result. It would allow one to terrorize another if the threat is communicated solely by electronic means without recourse to the spoken or written word. It is well settled that courts may presume that the legislature does not intend an absurd result. Minn.Stat. § 645.1711 (1994); see also Salimen v. City of St. Paul, 281 N.W.2d 355, 361 n. 8 (Minn.1979). Moreover, courts should give a reasonable and sensible construction to criminal statutes. State v. Sues, 236 Minn. 174, 183, 52 N.W.2d 409, 415 (1952). In choosing between possible definitions of a statutory term, courts must accept the interpretation which is more consistent with the statute's logic and practical use. See Industrial Rubber Applicators, Inc. v. Egan Metal Prods. Co., 285 Minn. 511, 515, 171 N.W.2d 728, 732 (1969). Because a "physical act" exception to Minn.Stat. § 609.713, subd. 1 would create the anomalous situation of barring the prosecution of a terrorist who communicates a threat by a physical act, but not the spoken or written word, we hold that physical acts which communicate a threat, as well as oral and written threats, fall within the ambit of that subdivision.	Interpreting terrorist threats statute to limit reach of statute to oral or written threats would lead to absurd result and allow one to terrorize another if the threat is communicated solely by electronic means without recourse to the spoken or written word. M.S.A. § 609.713, subd. 1.	What would limiting the reach of the terrorist threats statute to oral and written threats lead to?	"Threats, Stalking and Harassment- Memo 003208089 IB_56018.docx"	ROSS-003208088-R055-003208089	SA, Sub	0.79	839	0	15,344	14,873	21,876	9,029
2315															
	Com. v. Balog, 393 Pa. Super. 158	135H+96	We believe that our focus on intentional conduct designed to provoke a mistrial is justified by reference to the case law concerning mistrials granted on the motion of the defendant. When a defendant moves for a mistrial the request ordinarily is assumed to remove any barrier to prosecution, even when the defendant's motion results from prosecutorial misconduct. See Commonwealth v. Hunter, 381 Pa.Super. 638, 373 A.2d 490, 107 (1977); Commonwealth v. Hunter, 381 Pa.Super. 499, 554 A.2d 112 (1989). However, when the conduct giving rise to the successful motion for a mistrial was intended to provoke the defendant into moving for a mistrial, then retrial is barred. Commonwealth v. Simons, 514 Pa. 10, 522 A.2d 537 (1987). Thus, if the defendant moves for a mistrial because of intentional prosecutorial misconduct designed to provoke a mistrial in order to secure a more favorable opportunity to present its case, then the defendant's motion for a mistrial is barred. We believe that the Commonwealth is entitled to a retrial if the defendant's motion for a mistrial is not barred.	If conduct of defense witness is intentionally designed to provoke successful mistrial request by Commonwealth, in order to secure a more favorable outcome, retrial is not barred.	"If the conduct of a defense witness is intentionally designed to provoke a successful mistrial request by a Commonwealth, in order to secure a more favorable outcome, is retrial not barred?"	015365.docx	LEGAEASE-00162855-LEGAEASE-00162856	Condensed, SA	0.84	0	1	0	1		
2316															
	United Servs. Auto. Acc'n v. Mich. Catastrophic Inj. Ass'n, 285 Mich. App. 24	135+2	"Residence" and "domicile" are legally synonymous. Cervantes v. Farm Bureau Ins. Co. of Mich., 272 Mich. App. 410, 414, 726 N.W.2d 73 (2006). Many factors have been considered with respect to the question of residency and the determination varies according to the facts and circumstances. Id. at 414-415, 726 N.W.2d 73. The factors that may be considered include, but are not limited to, the person's intent, mailing address, the address listed on the person's driver's license, tax returns, and other documents; the location of bank accounts; maintenance of a telephone number; and property ownership. Id.; see also Witt v. American Family Mut. Ins. Co., 219 Mich. App. 607, 605-606, 557 N.W.2d 163 (1997).	"Residence" and "domicile" are legally synonymous, with respect to question of residency, factors that may be considered include, but are not limited to, the person's intent, mailing address, the address listed on the person's driver's license, tax returns, and other documents; the location of bank accounts; maintenance of a telephone number; and property ownership.	"With respect to question of residency, what are factors that may be considered?"	014563.docx	LEGAEASE-00164198-LEGAEASE-00164199	SA, Sub	0.47	0	0	1	1		
2317															
	United States v. Higgins, 75 F.3d 332	135H+97	Defendants who request a mistrial relinquish their entitlement to a verdict by the jury then impaneled and may not use the double jeopardy clause to avoid a second trial, but if prosecutor deliberately introduces error in order to provoke a mistrial request and rescue a trial going badly, the Constitution treats matters as if the mistrial had been declared on prosecutor's initiative. See Oregon v. Kennedy, 456 U.S. 657, 679, 102 S.Ct. 2083, 2091, 72 L.Ed.2d 416 (1982); United States v. Oslen, 996 F.2d 186 (7th Cir.1993); United States v. Jozwiak, 954 F.2d 458 (7th Cir.1992).	Do defendants who request mistrial relinquish their entitlement to verdict by jury then impaneled and may not use double jeopardy clause to avoid second trial, but if prosecutor deliberately introduces error in order to provoke mistrial request and rescue trial going badly, Constitution treats matters as if mistrial had been declared on prosecutor's initiative. U.S.C.A. Const. Amend. 5.	Do defendants who request mistrial relinquish their entitlement to a verdict by a jury then impaneled and may not use a double jeopardy clause to avoid a second trial?	Double Jeopardy - Memo 297 - C-PC_66528.docx	ROSS-003208032-R055-003208037	Condensed, SA, Sub	0.42	0	1	1	1		
2318															
	Friedmann v. State, 172 P.3d 831	135H+95.1	Because a defendant's right to have their case decided by the originally empaneled jury is a crucial aspect of the constitutional protection against double jeopardy, the dismissal of that jury always has constitutional consequences. This remains true even if the jury is dismissed under the authority of Alaska Criminal Rule 27(d)(3) that is, even when one might reasonably expect that the court would have ordered a mistrial at the end of the original trial, but with a new jury.	Because a defendant's right to have his or her case decided by the originally empaneled jury is a crucial aspect of the constitutional protection against double jeopardy, the dismissal of that jury always has constitutional consequences?"	"Because a defendant's right to have his or her case decided by the originally empaneled jury is a crucial aspect of the constitutional protection against double jeopardy, does the dismissal of that jury always have constitutional consequences?"	015446.docx	LEGAEASE-00163501-LEGAEASE-00163502	Condensed, SA, Sub	0.35	0	1	1	1		
2319															
	Johnson v. State, 138 Md. App. 539	135H+95.1	Neither party has a right to have his case decided by a jury which may be empaneled after the original trial has concluded. The parties are not entitled to a retrial based on the order in past judgments or trial over the defendant's "valued right" to have his trial concluded by the first jury impaneled.	Does neither party have a right to have his case decided by a jury which may be empaneled after the original trial has concluded?	Does neither party have a right to have his case decided by a jury which may be empaneled after the original trial has concluded?	015452.docx	LEGAEASE-00163511-LEGAEASE-00163512	SA, Sub	0	0	0	1	1		
2320															

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2321	Gore v. State, 784 So. 2d 418	135H+97	As stated by the United States Supreme Court in Kennedy, the Double Jeopardy Clause would prevent the State from retrying a defendant where it is established that the judge or prosecutor, by his or her own egregious conduct, caused the defendant to move for a mistrial, and conduct of judge or prosecutor was intended to provide defendant into moving for mistrial, U.S.C.A. Const.Amend. 5.	Double jeopardy clause prevents state from retrying defendant where it is established that judge or prosecutor, by his or her own egregious conduct, caused defendant to move for mistrial, and conduct of judge or prosecutor was intended to provide defendant into moving for mistrial, U.S.C.A. Const.Amend. 5.	"Does a double jeopardy clause prevent a state from retrying a defendant where it is established that judge or prosecutor, by his or her own egregious conduct, caused the defendant to move for mistrial?"	Double Jeopardy - Memo 389 - C - RE_66799.docx	ROSS-003284081-ROSS-003284082	Condensed, SA	0.69	839	15,344	14,873	21,876	9,029
2322	Com. v. Ellis, 432 Mass. 746	135H+95.1	Second, even if the judge erred, the defendant has not made the requisite showing of bad faith. Commonwealth v. Andrews, supra at 448, 530 N.E.2d 1222. Absent evidence that the judge acted in bad faith, alleged judicial errors giving rise to a mistrial do not support a claim of double jeopardy. Id. at 448-449, 530 N.E.2d 1222. United States v. Dinitz, supra at 1032, 108 S.Ct. 3277, 50 L.Ed.2d 892 (1988). The defendant's claim that the prosecution should have avoided the deadlock is specious. Without more, these unsubstantiated allegations do not warrant a finding of bad faith.	Absent evidence that the judge acted in bad faith, alleged judicial errors giving rise to a mistrial do not support a claim of double jeopardy. U.S.C.A. Const.Amend. 5.	"Absent evidence that the judge acted in bad faith, do a alleged judicial errors giving rise to a mistrial not support a claim of double jeopardy?"	Double Jeopardy - Memo 402 - C - MS_66811.docx	LEGALASE-00163551-LEGALASE-00163552	SA, Sub	0.71	0	0	1	1	1
2323	United States v. Gallagher, 743 F.Supp.745	135H+95.1	The double jeopardy provision of the fifth amendment bars retrial of a criminal defendant after a mistrial is granted over the objection of the defense, unless there is "manifest necessity" for the mistrial. United States v. Weems, 429 U.S. 405, 409, 412, 98 S.Ct. 1066, 465 U.S. 1032, 108 S.Ct. 3277, 50 L.Ed.2d 892 (1988). The defendant's claim that the prosecution should have avoided the deadlock is specious. Without more, these unsubstantiated allegations do not warrant a finding of bad faith.	Double jeopardy provision of Fifth Amendment bars retrial of criminal defendant after mistrial is granted over objection of defense unless there is "manifest necessity" for mistrial. U.S.C.A. Const.Amend. 5.	"Does the double jeopardy provision of the Fifth Amendment bar retrial of a criminal defendant after a mistrial is granted over objection of defense unless there is a "manifest necessity" for mistrial?"	Double Jeopardy - Memo 402 - C - MS_66811.docx	ROSS-003282968-ROSS-003282969	Condensed, SA, Sub	0.73	0	1	1	1	1
2324	Jordan v. O'Brien, 152 A.D.2d 671	135H+95.1	Unlike the situation in which a criminal trial has resulted in a judgment of acquittal, retrial of an indictment is not automatically barred where the merits of the charges against the defendant have not been finally resolved. Matter of Plummer v. Rothwax, 63 N.Y.2d 243, 249, 481 N.Y.S.2d 657, 471 N.E.2d 429. Where, as here, a mistrial was granted at the request of the petitioner's trial counsel and there is no evidence of bad faith, or of an attempt by the prosecutor to provide a mistrial, the defendant's claim that the prosecution should have avoided the deadlock is specious. (People v. Ferguson, 67 N.Y.2d 383, 388, 502 N.Y.S.2d 972, 494 N.E.2d 777; People v. Presley, 136 A.D.2d 949, 525 N.Y.S.2d 84; Matter of Owen v. Harrigan, 131 A.D.2d 2420, 23, 520 N.Y.S.2d 771).	Unlike situation in which criminal trial has resulted in judgment of acquittal, retrial of indictment is not automatically barred where merits of charge against defendant have not been finally resolved. U.S.C.A. Const.Amend. 5.	"Unlike situation in which criminal trial has resulted in judgment of acquittal, is retrial of indictment not automatically barred where merits of charge against defendant have not been finally resolved?"	Double Jeopardy - Memo 402 - C - MS_66811.docx	LEGALASE-00163581-LEGALASE-00163582	Condensed, SA, Sub	0.7	0	1	1	1	1
2325	Deal v. Consumer Programs, 770 F.3d 1225	156+52.103	Like the district court, we reject Deal's conclusory and unsupported argument on this point. Under our law, "to leave a trial intentionally incomplete is not a waiver of the right to a new trial." United States v. Corp., 90 S.W.3d 194, 207 (Mo.Ct.App.2002) (quotation omitted). "To rise to the level of waiver, the conduct must be so manifestly consistent with and indicative of an intention to renounce a particular right or benefit that no other reasonable explanation of the conduct is possible." Austin v. Pickett, 875 W.3d 343, 348 (Mo.Ct.App.2002) (quotation omitted). Deal alleges no facts, and we find nothing in the record, demonstrating CPI intentionally relinquished its right to assert the occurrence of a condition precedent to its claim. Deal's argument that the district court erred if we were to examine CPI's individual transaction with Seton, CPI's conduct cannot be labeled an unequivocal and intentional relinquishment by CPI sufficient to waive the payment requirement generally with regard to all stock option contracts in which CPI was a party. We similarly reject Deal's argument with regard to the applicability of the estoppel doctrine. Deal fails to satisfy her burden of proving an estoppel. See accompanying opinion for discussion of Deal's argument that the burden of this estoppel will not be "discovered liability," not "the party asserting an estoppel bears the burden of proving it" (quotation omitted).	Under Missouri law, waiver is the intentional relinquishment of a known right to the level of waiver, the conduct must be so manifestly consistent with and indicative of an intention to renounce a right that no other reasonable explanation is possible.	"To rise to the level of waiver, should conduct be so manifestly consistent with an intention to renounce a right that no other reasonable explanation is possible?"	Double Jeopardy - Memo 402 - C - MS_66811.docx	LEGALASE-00163595-LEGALASE-00163596	Condensed, SA	0.79	0	1	0	1	1

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Between Trial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences		
2326	Knight v. Chicago Corp., 183 S.W.2d 666	2637-79.1(10.3)	If the term "undivided interests" be given its broadest possible meaning, appellants' contention will be upheld. However, the restrictive construction of the term "undivided interests" is required and, when considered in connection with the second italicized clause of paragraph 8, would, according to appellants' contention, operate as a limitation or a condition subsequent supporting a forfeiture. Before such construction can be made effective the language employed in the lease must be so certain that it can be said beyond peradventure that the contracting parties intended to prescribe the type of agreement (the uniting contracts) employed by the Richardson Petroleum Company in its dealings with its lessees. The language employed in the lease is not so certain. The words "pooling agreements," "unitizing contracts," or like specific terms were not employed in the provision prohibiting assignments of certain types of interests, although pooling or unitizing arrangements for oil and gas development purposes were well known to the Texas oil industry in 1940. The words actually used in the lease were, "Lease shall not make assignments of undivided interests, overriding royalties or oil payments." These three clauses of assignments, overriding royalties or oil payments, and the prohibition against assignments, are taken from the lease in Summers v. Summers, 235 S.W.2d 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.	An "undivided interest" in a mineral lease is an undivided percentage of working interests, which arises from oil payment or overriding royalty, and is not to be confused with the pro rata share of the cost of development and production.	"Is an undivided interest an undivided percentage of the working interests, which arises from oil payment or the overriding royalty, and is not to be confused with the pro rata share of the cost of development and production?"	Mines and Minerals - C-C; ML_66671.docx	POSS-00297063-POSS-00297063	Condensed, SA	0.9	839	1	15,344	14,873	21,876	9,079	
2327	Nielsen on Behalf of Niemen v. Chestnut Hill Hosp., 373 Pa. Super. 377	307A-697	A petition to open a judgment of non pro is addressed to the court's equitable power, and the exercise of those powers will not be disturbed absent an abuse of discretion. Hutchison v. Hutchison, 482 Pa. 118, 123, 422 A.2d 501, 503-04 (1980). However, before a court may open a judgment, the party seeking vacation must demonstrate that: (1) the petition to open was timely filed; (2) the default which occasioned the entry of judgment cannot be reasonably explained; and (3) the facts and circumstances justify the relief sought. See, e.g., In re Estate of General Binkley Co., 359 Pa. Super. 572, 519 A.2d 500, 501 (1986); Horan v. R.S. Cook and Associates, Inc., 287 Pa. Super. 265, 430 A.2d 728, 729 (1981); Corcoran v. Fiorentino, 277 Pa. Super. 256, 419 A.2d 759, 761 (1980); Dupree v. Lee, 241 Pa. Super. 259, 361 A.2d 331, 333 (1976).	Before court may open non pro judgment, party seeking vacation must demonstrate that: petition to open was timely filed, default which occasioned entry of judgment can be reasonably explained, and facts constituting grounds for cause of action are alleged.	"Before a court can open a non pro judgment, what should a party seeking vacation demonstrate?"	040750.docx	LEGALISE-00163221-LEGALISE-00163222	Condensed, SA	0.69	0	1	0	1	1		
2328	Wells Fargo Bank, N.A. v. Bonatow, 112 So. 3d 596	307A-243	Instead, the ostensible basis for dismissal with prejudice was that the bank had standing to determine whether the bank had standing to review de novo. See Magnum Capital, LLC v. Carter Assoc., LLC, 905 So. 2d 220, 221 (Fla. 1st DCA 2005) ("We review de novo a trial court's final disposition on a motion to dismiss for failure to state a cause of action.") As a general matter, trial courts are to give plaintiffs "an opportunity to amend the defective pleading, unless it is apparent that the pleading cannot be amended to state a cause of action." See Karalis v. John D. Catherine I. MasterCard Int'l, 519 So. 2d 100, 101 (Fla. 1st DCA 1987). The court's decision to grant summary judgment was an abuse of discretion. A decision of a document is a remediable offense. See Wells Fargo Bank, N.A. v. Reeves, 92 So. 3d 249, 251 (Fla. 1st DCA 2012).	For purposes of general rule that trial courts are to give plaintiffs an opportunity to amend the defective pleading, the failure to attach necessary documents is a remediable offense.	"For purposes of general rule that trial courts are to give plaintiffs an opportunity to amend the defective pleading, the failure to attach necessary documents is a remediable offense?"	040792.docx	LEGALISE-00163841-LEGALISE-00163842	Condensed, SA, Sub	0.78	0	1	1	1	1		
2329	Mohiuddin v. Doctors Billing & Mgmt. Sols., 196 Md. App. 439	307A-695	Leave to amend is either expressly stated on the face of the order or it does not exist. If the dismissal order expressly grants "leave to amend," there is no trial judgment and the case is not closed. At that point, the nature of the case is governed by the order's requirements imposed on the parties. See, e.g., In re Estate of Bonatow, 112 So. 3d 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.	"Unless the case is being kept alive by some other means, does a dismissal without the magic words "with leave to amend" close the case finally and there is, therefore, nothing to amend. Md. Rule 2.322."	"Unless the case is being kept alive by some other means, does a dismissal without the magic words "with leave to amend" close the case finally?"	040942.docx	LEGALISE-00163245-LEGALISE-00163246	SA, Sub	0.64	0	0	1	1	1	1	
2330	In re Gateway Ethanol, 415 B.R. 486	349A-10	The first part of the test looks at whether the lease may terminate the agreement during its term. The second part looks at what are referred to as the Residual Value Factors. If the lease may not terminate the lease during its term and any one of the Residual Value Factors is present, the transaction is a sale without consideration of any other facts and circumstances.	Under Illinois law, pursuant to the bright-line test for whether a transaction in the form of a lease creates a security interest, if the lease may not terminate the lease during its term and any one of the "residual value factors" is present, the transaction is a sale without consideration of any other facts and circumstances. S.H.A. 830 ILCS 5/1-201 (B7) (2005).	"If the lease may not terminate the lease during its term and any one of the "residual value factors" is present, is the transaction a sale without consideration of any other facts and circumstances?"	042762.docx	LEGALISE-00164012-LEGALISE-00164013	Condensed, Order, SA	0.01	1	1	0	1	1		

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Between Opinion and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
2331	Doctors Assoc. v. Stuart, 857 So.975	251+184	When a party agrees "to arbitrate in [a state], where the Federal Arbitration Act makes such agreements specifically enforceable, that party must be deemed to have consented to the jurisdiction of that state. It is not otherwise would be to render the arbitration clause a nullity." Victory Transp., Inc. v. Consular General de Abasco, 336 F.2d 354, 363 (2d Cir. 1964), cert. denied, 381 U.S. 934, 855 O. 1763, 14 Fed.2d 698 (1966); see also Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Wechsler, 553 F.2d 842, 844 (2d Cir. 1977); Island Territory of Curacao v. Leocadio Boveas, Inc., 859 F.2d 1311, 1317 (2d Cir. 1973), cert. denied, 454 U.S. 1101, 73 L. Ed.2d 491, 50 A.L.R.3d 1281, 1282 (1981). It is not, however, that they cannot be deemed to have consented to personal jurisdiction if the arbitration clause is unenforceable. And, they assert the arbitration clause is unenforceable because: (1) DA fraudulently induced them into the arbitration agreement; (2) the arbitration agreement is unconscionable; and (3) DA waived its right to arbitrate.	When party agrees to arbitrate in a state where Federal Arbitration Act (FAA) makes such agreements specifically enforceable, that party must be deemed to have consented to the jurisdiction of that state. 9 U.S.C.A. § 1, et seq.	Alternative Dispute Resolution - Memo 883 - 00054010-10054011-00054012-00054013-00054014-00054015-00054016-00054017-00054018-00054019-00054020-00054021-00054022-00054023-00054024-00054025-00054026-00054027-00054028-00054029-00054030-00054031-00054032-00054033-00054034-00054035-00054036-00054037-00054038-00054039-00054040-00054041-00054042-00054043-00054044-00054045-00054046-00054047-00054048-00054049-00054050-00054051-00054052-00054053-00054054-00054055-00054056-00054057-00054058-00054059-00054060-00054061-00054062-00054063-00054064-00054065-00054066-00054067-00054068-00054069-00054070-00054071-00054072-00054073-00054074-00054075-00054076-00054077-00054078-00054079-00054080-00054081-00054082-00054083-00054084-00054085-00054086-00054087-00054088-00054089-00054090-00054091-00054092-00054093-00054094-00054095-00054096-00054097-00054098-00054099-00054100-00054101-00054102-00054103-00054104-00054105-00054106-00054107-00054108-00054109-00054110-00054111-00054112-00054113-00054114-00054115-00054116-00054117-00054118-00054119-00054120-00054121-00054122-00054123-00054124-00054125-00054126-00054127-00054128-00054129-00054130-00054131-00054132-00054133-00054134-00054135-00054136-00054137-00054138-00054139-00054140-00054141-00054142-00054143-00054144-00054145-00054146-00054147-00054148-00054149-00054150-00054151-00054152-00054153-00054154-00054155-00054156-00054157-00054158-00054159-00054160-00054161-00054162-00054163-00054164-00054165-00054166-00054167-00054168-00054169-00054170-00054171-00054172-00054173-00054174-00054175-00054176-00054177-00054178-00054179-00054180-00054181-00054182-00054183-00054184-00054185-00054186-00054187-00054188-00054189-00054190-00054191-00054192-00054193-00054194-00054195-00054196-00054197-00054198-00054199-00054200-00054201-00054202-00054203-00054204-00054205-00054206-00054207-00054208-00054209-00054210-00054211-00054212-00054213-00054214-00054215-00054216-00054217-00054218-00054219-00054220-00054221-00054222-00054223-00054224-00054225-00054226-00054227-00054228-00054229-00054230-00054231-00054232-00054233-00054234-00054235-00054236-00054237-00054238-00054239-00054240-00054241-00054242-00054243-00054244-00054245-00054246-00054247-00054248-00054249-00054250-00054251-00054252-00054253-00054254-00054255-00054256-00054257-00054258-00054259-00054260-00054261-00054262-00054263-00054264-00054265-00054266-00054267-00054268-00054269-00054270-00054271-00054272-00054273-00054274-00054275-00054276-00054277-00054278-00054279-00054280-00054281-00054282-00054283-00054284-00054285-00054286-00054287-00054288-00054289-00054290-00054291-00054292-00054293-00054294-00054295-00054296-00054297-00054298-00054299-00054300-00054301-00054302-00054303-00054304-00054305-00054306-00054307-00054308-00054309-00054310-00054311-00054312-00054313-00054314-00054315-00054316-00054317-00054318-00054319-00054320-00054321-00054322-00054323-00054324-00054325-00054326-00054327-00054328-00054329-00054330-00054331-00054332-00054333-00054334-00054335-00054336-00054337-00054338-00054339-00054340-00054341-00054342-00054343-00054344-00054345-00054346-00054347-00054348-00054349-00054350-00054351-00054352-00054353-00054354-00054355-00054356-00054357-00054358-00054359-00054360-00054361-00054362-00054363-00054364-00054365-00054366-00054367-00054368-00054369-00054370-00054371-00054372-00054373-00054374-00054375-00054376-00054377-00054378-00054379-00054380-00054381-00054382-00054383-00054384-00054385-00054386-00054387-00054388-00054389-00054390-00054391-00054392-00054393-00054394-00054395-00054396-00054397-00054398-00054399-00054400-00054401-00054402-00054403-00054404-00054405-00054406-00054407-00054408-00054409-00054410-00054411-00054412-00054413-00054414-00054415-00054416-00054417-00054418-00054419-00054420-00054421-00054422-00054423-00054424-00054425-00054426-00054427-00054428-00054429-00054430-00054431-00054432-00054433-00054434-00054435-00054436-00054437-00054438-00054439-00054440-00054441-00054442-00054443-00054444-00054445-00054446-00054447-00054448-00054449-00054450-00054451-00054452-00054453-00054454-00054455-00054456-00054457-00054458-00054459-00054460-00054461-00054462-00054463-00054464-00054465-00054466-00054467-00054468-00054469-00054470-00054471-00054472-00054473-00054474-00054475-00054476-00054477-00054478-00054479-00054480-00054481-00054482-00054483-00054484-00054485-00054486-00054487-00054488-00054489-00054490-00054491-00054492-00054493-00054494-00054495-00054496-00054497-00054498-00054499-00054500-00054501-00054502-00054503-00054504-00054505-00054506-00054507-00054508-00054509-00054510-00054511-00054512-00054513-00054514-00054515-00054516-00054517-00054518-00054519-00054520-00054521-00054522-00054523-00054524-00054525-00054526-00054527-00054528-00054529-00054530-00054531-00054532-00054533-00054534-00054535-00054536-00054537-00054538-00054539-00054540-00054541-00054542-00054543-00054544-00054545-00054546-00054547-00054548-00054549-00054550-00054551-00054552-00054553-00054554-00054555-00054556-00054557-00054558-00054559-00054560-00054561-00054562-00054563-00054564-00054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ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
2337	State v. Liberator, 4 Ohio St.3d 13	135H+1	Where successive prosecutions are at stake, the double jeopardy guarantee serves "a constitutional policy of finality for the defendant's benefit." United States v. Jorn (1971), 400 U.S. 470, 479, 91 S.Ct. 547, 554, 27 L.Ed.2d 543. That policy protects the accused from attempts to relitigate facts underlying a prior acquittal. See Ashe v. Swenson (1970), 397 U.S. 436, 90 S.Ct. 1189, 25 L.Ed.2d 469. The question in this case is whether that guarantee would be violated were the state to be allowed to proceed on an aggravated murder charge pursuant to R.C. 2903.01(B) after the accused had already been acquitted of the underlying felony at a previous trial.	Where successive prosecutions are at stake, double jeopardy guarantee serves constitutional policy of finality for defendant's benefit; furthermore, that policy protects accused from attempts to relitigate facts underlying prior acquittal. U.S.C.A. Const.Amend. 5, 14.	"Where successive prosecutions are at stake, does the guarantee against double jeopardy serve a constitutional policy of finality for the defendant's benefit?"	01.0049.docx	LEGAL-001.05.79-7; LEGAL-001.05.79-8	SA, Sub	0.59	0	0	1	21.876	9.079
	State v. Musseman, 667 P.2d 1061	135H+100.1	An appellate court, on principles deeply rooted in the double jeopardy clause of the Utah and federal constitutions, and by the very nature of the judicial process itself, may not reassess an acquittal even though the acquittal was made under an incorrect application of the law or an improper determination of the facts. United States v. Martin Linen Supply Co., supra. Once a criminal charge has resulted in an acquittal by the trier of fact, the prohibition against double jeopardy prevents that defendant from ever again being charged with the same offense. The prohibition against double jeopardy is of no consequence when the defendant is charged with a different offense. See, e.g., Tibbs v. Florida, 457 U.S. 31, 41, 102 S.Ct. 2211, 2218, 72 L.Ed.2d 652 (1982); United States v. Martin Linen Supply Co., supra; United States v. Ball, 163 U.S. 662, 16 S.Ct. 1192, 41 L.Ed. 300 (1896).3 Furthermore, for an appellate court to render an opinion on appeal from an acquittal would be to render an advisory opinion, which is beyond our power. See State v. Overton, supra.	Once a criminal charge has resulted in an acquittal by trier of fact, prohibition against double jeopardy prevents that determination from ever again being challenged; it is of no consequence that determination was made as a matter of law by directed verdict of acquittal, or as matter of fact by trier of fact. U.S.C.A. Const.Amend. 5; Const. Art. 1, § 12.	"Once a criminal charge has resulted in an acquittal by trier of fact, does prohibition against double jeopardy prevent that determination from ever again being challenged?"	01.0303.docx	LEGAL-001.05.62-7; LEGAL-001.05.62-8	SA, Sub	0.68	0	0	1	1	
2338	United States v. Sanders, 591 F.2d 1293	135H+95.1	A defendant clearly may not be reprosecuted for the same crime after an acquittal. Benton v. Maryland, 395 U.S. 784, 796, 89 S.Ct. 2056, 23 L.Ed.2d 707 (1969). In some instances, however, a court may have to discharge a jury before it makes a decision on guilt or innocence. Discharge in such cases will not necessarily operate to the defendant's disadvantage, and may even be at the defendant's benefit. When the jury is discharged, the defendant is not retried, and the defendant's right to a fair trial is not impaired. The public interest in affording the prosecutor one full and fair opportunity to present his evidence to an impartial jury." Arizona v. Washington, 434 U.S. at 505, 98 S.Ct. at 830. Cfing United States v. Jorn, 400 U.S. at 479-80, 91 S.Ct. 547. However, because the defendant's right is of constitutional origin, the prosecutor has a heavy burden to meet in seeking reprobsecution after a mistrial over the defendant's objection. The burden must be met by demonstrating that the mistrial resulted from "manifest necessity." Id.	A defendant may not be reprosecuted for the same crime after an acquittal, but in some instances a court may have to discharge a jury before it makes a decision on guilt or innocence; discharge in such cases will not necessarily operate to the defendant's disadvantage, and may even be at his behalf. U.S.C.A. Const. Amend. 5.	"Can a defendant not be reprosecuted for the same crime after an acquittal, but in some instances a court may have to discharge a jury before it makes a decision on guilt or innocence?"	01.0330.docx	LEGAL-001.05.65-3; LEGAL-001.05.65-4	Condensed SA, Sub	0.7	0	1	1	1	1
2339														
2340	People v. Laguerre, 42 Cal. 4th 126	2310+346)	In Apprendi, supra, 530 U.S. 466, 120 S.Ct. 2348, the high court held that "other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." [Id. at p. 120, n. 2.] The rule of Apprendi is grounded on the reasoning that the Sixth Amendment's right to a fair trial includes the right to be proved beyond a reasonable doubt because they expose the defendant to punishment; likewise, the elements of a sentence enhancement must be proved beyond a reasonable doubt if there is exposure to increased punishment. [Citation.]" (People v. Sengulayeth [2001] 26 Cal.4th 316, 325-326, 109 Cal.Rptr.2d 851, 27 P.3d 739.) The rule is compelled by the federal Constitution's Fifth Amendment right to due process and Sixth Amendment right to jury trial, made applicable to the states through the Fourteenth Amendment. People v. Sengulayeth, 2001 WL 127, P.3d 739. It is not grounded on principles of federal double jeopardy protection.	Rule of Apprendi, that other than fact of prior conviction any fact that increases penalty for crime beyond prescribed statutory maximum must be submitted to jury and proved beyond a reasonable doubt, is compelled by the federal Constitution's Fifth Amendment right to due process and Sixth Amendment right to jury trial, made applicable to states through Fourteenth Amendment. It is not grounded on principles of federal double jeopardy protection. U.S.C.A. Const. Amends. 5, 6, 14.	"Should other than fact of prior conviction any fact that increases penalty for crime beyond prescribed statutory maximum, be submitted to jury and proved beyond a reasonable doubt?"	01.0909.docx	LEGAL-001.06.21-4; LEGAL-001.06.21-5	Condensed SA, Sub	0.55	0	1	1	1	1
	People v. Graco, 258 Mich. App. 274	135H+96	Jeopardy attaches when a jury is selected and sworn and the Double Jeopardy Clause therefore protects a defendant's interest in avoiding multiple prosecutions even when no prior determination of guilt or innocence has occurred. People v. Graco, 258 Mich. App. 274, 280-281, 416 N.W.2d 811. "However, the general rule permitting the prosecution only one opportunity to obtain a conviction must in some instances be subordinated to the public's interest in fair trials designed to end in just judgments." Id. (internal quotation omitted); see also People v. Anderson, 409 Mich. 474, 485, 295 N.W.2d 482 (1980). If a trial is concluded prematurely, "a retrial for that offense is prohibited unless the defendant consented to the interruption or a mistrial was declared because of a procedural error." People v. Graco, 258 Mich. App. 274, 283 Mich. App. (1991) [emphasis added]; see also People v. Ebbas, 474 Mich. App. 356, 365, 590 N.W.2d 717 (1999) (The defendant's consent to a mistrial does not bar a retrial under double jeopardy principles).	If a criminal trial is concluded prematurely, a retrial for that offense is prohibited on double jeopardy grounds unless the defendant consented to the interruption or a mistrial was declared because of a manifest necessity. U.S.C.A. Const.Amend. 5; M.C.L.A. Const. Art. 1, § 13.	"If a criminal trial is concluded prematurely, is a retrial for that offense prohibited on double jeopardy grounds unless the defendant consented to the interruption or a mistrial was declared because of a manifest necessity?"	Double Jeopardy - Memo 829 - C - MS_88406.docx	ROSS-0032.9672-AC05S-0032.96723	SA, Sub	0.73	0	0	1	1	
2341														

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ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
2349	In re Frankum, 359 B.R. 498	36e+1	Under a theory of equitable subrogation, a person who pays the debt of another may seek reimbursement to prevent unjust enrichment. In re Hall, 295 B.R. 877, 881 (Bankr. W.D.Ark. 2003). To invoke the doctrine of equitable subrogation, five criteria must be met: (1) the party seeking subrogation must be a volunteer; (2) the party seeking subrogation must not have acted as a volunteer; (3) the party seeking subrogation must not have been paid off the entire debt; and (4) subrogation must not work injustice to the rights of others.	To invoke the doctrine of equitable subrogation, five criteria must be met: (1) the party seeking subrogation must have made the payment to protect its own interest; (2) the party seeking subrogation must not have acted as a volunteer; (3) the party seeking subrogation must not have been paid off the entire debt; and (4) subrogation must not work injustice to the rights of others.	What criteria must be met to invoke the doctrine of equitable subrogation?	Subrogation - Memo 339 - T1.docx	RO33-0033.0023-RO25-0033.0024	Condensed, SA	0.35	839	15,344	34,873	21,876	9,029
	Odell v. City of Baton Rouge, 391 F.3d 623	23+6(1)	The threshold issue in a defamation action is whether the words at issue are defamatory. Defamatory words are traditionally classified into two categories: words that are defamatory per se and statements that are susceptible to a defamatory meaning. Id. Words that "expressly or implicitly accuse another of criminal conduct, or which by their very nature tend to injure one's personal or professional reputation, even without considering extrinsic facts or surrounding circumstances, are considered defamatory per se." Id. Statements susceptible to a defamatory meaning are "words which, when taken in context, are susceptible to being understood in the estimation of the community, to defame others, from associating or dealing with the person or otherwise expose a person to contempt or ridicule," and convey an element of personal disgrace, dishonesty or disrepute. Id. Whether a particular statement "is objectively capable of having a defamatory meaning is a legal issue to be decided by the court, considering the statement as a whole, the context in which it was made, and the effect it is reasonably intended to produce in the mind of the average listener." Id. (Reed v. State of Ark., 54 F.3d 1044, 1050 (8th Cir. 1995)) (quoting Gertz v. Robert & Barry, 685 So.2d 1177, 1180 (La. 1996)).	Under Louisiana law, a statement is susceptible to a defamatory meaning if it is susceptible to being understood in the estimation of the community, to defame others, from associating or dealing with the person or otherwise expose a person to contempt or ridicule, and convey an element of personal disgrace, dishonesty or disrepute.	"Are words with elements of personal disgrace, dishonesty or disrepute defamatory?"	06531.docx	LEGALCASE-00080593-LEGALCASE-00080032	SA, Sub	0.72	0	0	1	1	
2350	Endless Ocean v. Twomey, Latham, Shea, Kelley, Quinn & Quarararo, 113 A.D.3d 387	307A+61.1	The Supreme Court improperly granted the defendants' motion to dismiss the complaint based on documentary evidence. A motion to dismiss a complaint pursuant to CPLR 3211(b)(3) may be granted only if the complaint fails to state a claim for relief. The court erred in granting the defendants' motion to dismiss the complaint on the basis of the factual allegations of the complaint. Conclusively establishing a defense as a matter of law (Gochen v. Mutual Life Ins. Co. of N.Y., 98 N.Y.2d 314, 325, 746 N.Y.S.2d 858, 774 N.E.2d 1190). Here, the retainer agreement submitted by the defendants did not conclusively establish a defense as a matter of law (see Harris v. Barbieri, 56 A.D.3d 904, 905-906; 947 N.Y.S.2d 548; Retschke v. Maimonides Med. Ctr., 83 A.D.3d 810, 811, 921 N.Y.S.2d 250; Shaya B. Pac., LLC v. Wilson, Eisler, Moskowitz, Edelman & Decker, 117, 38 A.D.3d 34, 38-39, 927 N.Y.S.2d 2323).	Equitable subrogation applies in every instance in which one person, not acting voluntarily, has paid a debt for which another was primarily liable and which in equity should have been paid by the latter.	Can a motion to dismiss a complaint on the ground of payment be granted where the documentary evidence establishes the defense of payment as a matter of law?	11252.docx	LEGALCASE-00045937-LEGALCASE-0004598	SA, Sub	0.66	0	0	1	1	
2351	Cassoway v. Smith, 269 S.W.3d 222	36e+26	Equitable subrogation applies "in every instance in which one person, not acting voluntarily, has paid a debt for which another was primarily liable and which in equity should have been paid by the latter." Id. at 42.	Equitable subrogation applies in every instance in which one person, not acting voluntarily, has paid a debt for which another was primarily liable and which in equity should have been paid by the latter.	"Does equitable subrogation apply in every instance in which one person, not acting voluntarily, has paid a debt for which another was primarily liable and which in equity should have been paid by the latter?"	043624.docx	LEGALCASE-00121104-LEGALCASE-00121109	Condensed, SA	0.06	0	1	0	1	
2352	RI Ins. Co. v. New York City Employees' Fed. Labor 57 NY 2d 236	36e+7(1)	Further, this Court has long held that a completing surety succeeds under equitable subrogation principles to all the rights that the obligor has under the contract with the obligee. The obligor's right to complete the contract or to satisfy outstanding claims for labor and materials furnished (see, Aetna Cas. & Sur. Co. v. United States, 4 NY 2d 639, 644-645; 776 N.Y.S.2d 963, 152 N.E.2d 2325 [1958]; United States Fed. & Guar. Co. v. Tiborough Bridge Auth., 297 N.Y. 31, 35-36, 74 N.E.2d 226 [1947]; Scarsdale Natl Bank & Trust Co. v. United States Fed. & Guar. Co., 264 N.Y. 150, 164, 190 N.E. 390 [1934]; see also, Herberman v. Reliance Ins. Co., supra, at 137, 85 S.Ct. 232, 7 L.Ed.2d 190). Here, the contract between the parties provided that the obligor was to complete the contract or to satisfy outstanding claims for labor and materials furnished (see, Aetna Cas. & Sur. Co. v. 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Co., 264 N.Y. 150, 164, 190 N.E. 390 [1934]; see also, Herberman v. Reliance Ins. Co., supra, at 137, 85 S.Ct. 232, 7 L.Ed.2d 190). Here, the contract between the parties provided that the obligor was to complete the contract or to satisfy outstanding claims for labor and materials furnished (see, Aetna Cas. & Sur. Co. v. United States, 4 NY 2d 639, 644-645; 776 N.Y.S.2d 963, 152 N.E.2d 2325 [1958]; United States Fed. & Guar. Co. v. Tiborough Bridge Auth., 297 N.Y. 31, 35-36, 74 N.E.2d 226 [1947]; Scarsdale Natl Bank & Trust Co. v. United States Fed. & Guar. Co., 264 N.Y. 150, 164, 190 N.E. 390 [1934]; see also, Herberman v. Reliance Ins. Co., supra, at 137, 85 S.Ct. 232, 7 L.Ed.2d 190). Here, the contract between the parties provided that the obligor was to complete the contract or to satisfy outstanding claims for labor and materials furnished (see, Aetna Cas. & Sur. Co. v. United States, 4 NY 2d 639, 644-645; 776 N.Y.S.2d 963, 152 N.E.2d 2325 [1958]; United States Fed. & Guar. 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Co., 264 N.Y. 150, 164, 190 N.E. 390 [1934]; see also, Herberman v. Reliance Ins. Co., supra, at 137, 85 S.Ct. 232, 7 L.Ed.2d 190). Here, the contract between the parties provided that the											

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	People v. Pease, 48 Mich. App. 79	92+3808	Second, the defendant asserts that there is no rational relationship between the different classifications of instruments and documents described in M.C.L.A. s 750.248, M.S.A. s 28.445 and M.C.L.A. s 750.253; M.S.A. s 28.450. From this defendant argues that the disparate maximum sentences prescribed in these statutes violates the equal protection of the law. U.S. Const. Am. XIV, Const. 1963 art. 1, s. 2. We cannot agree in the comprehensive and well-reasoned opinion of People v. Brooks, 43 Mich.App. 715, 204 N.W.2d 718 (1972). This Court held that there is a rational distinction between M.C.L.A. s 750.249; M.S.A. s 28.446 which encompasses the forgery and the uttering and publishing of certain classes of documents executed by individuals and private companies and M.C.L.A. s 750.253; M.S.A. s 28.450 which deals with the forgery on the uttering and publishing of bills and notes issued by governmental units and banking companies. Thus, the court found that the differing sentences delineated by the statutes do not violate the equal protection of the law. We find Brooks dissonant and likewise hold that the statutory scheme of imposing different maximum sentences for the crime of forging or uttering and publishing different classes of documents or instruments does not violate the equal protection of the law.	Statutory scheme of imposing different maximum sentences for crime of forging or uttering and publishing different classes of documents or instruments imposed by the law. M.C.L.A. s 750.248, 750.253; U.S.C.A.Const. Amend. 14; M.C.L.A.Const.1963, art. 1, s. 2.	Does the statutory scheme of imposing different maximum sentences for the crime of forging or uttering and publishing a forged instrument violate equal protection of the law?	Forgery - Memo 43 - 3N_25760.docx	R055-002281663-R055-003381664	Order, SA, Sub	0.78	1	839	15,344	14,873	21,876	9,029
2355	State Bar of California v. Statile, 168 Cal. App. 4th 650	366+1	"Subrogation, a legal fiction, is broadly defined as the substitution of one person in the place of another with reference to a lawful claim or right. It is a right which is purely derivative and it permits a party who has been required to satisfy a loss created by a third party's wrongful act to step into the shoes of the loser and pursue recovery from the responsible wrongdoer. Stated another way, it is a substitution of one person in place of another with reference to a lawful claim, demand or right, so that he who is substituted succeeds to the rights of the other in relation to a debt or claim, and its rights, remedies, or securities." [73 Am.Bur.2d (2001) Subrogation, "1, pp. 541-542, Ins. omitted).]" "Statutory subrogation," as its name suggests, arises by an act of the legislature that vests a right of subrogation with a party or category of parties, and it is governed by the terms of the statute under which it is claimed as a matter of statutory construction." [Id. at pp. 544-545, 216 Cal.App. 367, 702 P.2d 525, Ins. omitted).]" "The nature of subrogation and its prohibition against double recovery make it bandorily clear that subrogation involves succession to the rights of others. Rights under subrogation are derivative rights, and succession to another's rights, like water, cannot rise higher than its source." " [Board of Administration v. Glover (1983) 34 Cal.3d 906, 915, 196 Cal.Rptr. 330, 671 P.2d 884, quoting Ventura County Employees' Retirement Association v. Pope (1978) 87 Cal.App.3d 938, 952, 151 Cal.Rptr. 695]. "The "true nature of subrogation" is that "it is applied in all cases in which "one party pays a debt for which another is primarily answerable, and which, in equity and good conscience, should have been discharged by the latter." " " (Fireman's Fund Ins. Co. v. Wilshire Film Ventures, Inc. (1997) 52 Cal.App.4th 553, 558, 60 Cal.Rptr. 2d 591.) It is abundantly clear here that Statile was primarily answerable for any loss suffered by the applicants and, in equity and good conscience, should have been subrogated to the rights of equity being recognized in the Peoples case. The doctrine of equity being recognized in the Peoples case is that, in good conscience, should have been paid by the one primarily liable. See, e.g., Loving v. Ponderosa Sys., Inc. 479 N.E.2d 531, 536-37 (Ind.1985). When a claim based on subrogation is recognized, "a court substitutes another person in the place of a creditor, so that the person in whose favor it is exercised succeeds to the right of the creditor in relation to the debt." " Matter of Estate of Dornie, 628 N.E.2d 1227, 1230 n. 4 (Ind.Cl.App.1994). It is settled that "[s]ubrogation confers no greater right than the creditor had at the time the surety or indemnitor became subrogated. The subrogator [sic] insurer stands in the same position as the creditor, for one cannot acquire by subrogation what another, whose rights he claims, did not have." " American States Ins. Co. v. Williams, 151 Ind.App. 99, 106, 278 N.E.2d 295, 300 (1972) (internal quotation marks and citation omitted). The ultimate purpose of the doctrine, as with other equitable principles such as contribution, is to prevent unjust enrichment. 73 Am.Jur. 20 Subrogation " 4 (1974). This doctrine is not limited to insurance contracts, and it is not limited to the payment of medical bills allegedly caused by Kellenberger's negligence. Kellenberger to that extent; but (2) Erie gets no more than George had before the payment.	"Is subrogation a substitution of one person in place of another with reference to a lawful claim, demand, or right, so that he who is substituted succeeds to the rights of the other in relation to a debt or claim, and its rights, remedies, or securities?"	"Does subrogation apply whenever a party, not acting as a volunteer, pays the debt of another that, in good conscience, should have been paid by one primarily liable?"	Subrogation - Memo 286- RM C.docx	R055-002384227-R055-003384229	Condensed, SA	0.87	0	1	0	1	1	
2357	Erie Ins. Co. v. George, 681 N.E.2d 833	366+1	"Subrogation is a doctrine of equity long recognized in Indiana. It applies whenever a party, not acting as a volunteer, pays the debt of another that, in good conscience, should have been paid by the one primarily liable. It is a right which is purely derivative and it permits a party who has been required to satisfy a loss created by a third party's wrongful act to step into the shoes of the injured party and recover from the third party wrongdoer. Stated another way, it is a substitution of one person in place of another with reference to a lawful claim, demand or right, so that he who is substituted succeeds to the rights of the other in relation to a debt or claim, and its rights, remedies, or securities." [73 Am.Bur.2d (2001) Subrogation, "1, pp.541-542, Ins. omitted)." "Statutory subrogation," as its name suggests, arises by an act of the legislature that vests a right of subrogation with a party or category of parties, and it is governed by the statute that creates the right. It is not created by contract or by common law." [Id., at pp. 544-545, 516 Cal.Bur. 367, 202 P.2d 526, Ins. omitted).] "The nature of subrogation and its prohibition against double recovery make it bandorily clear that subrogation involves succession to the rights of others. Rights under subrogation are derivative rights, and succession to another's rights, like water, cannot rise higher than its source." " [Board of Administration v. Glover [1983] 34 Cal.3d 906, 915, 196 Cal.Rptr. 330, 671 P.2d 884, quoting Ventura County Employees' Retirement Association v. Pope [1978] 87 Cal.App.3d 938, 952, 151 Cal.Rptr. 695]. "The "true nature of subrogation" is that "it is applied in all cases in which "one party pays a debt for which another is primarily answerable, and which, in equity and good conscience, should have been discharged by the latter." " (Fireman's Fund Ins. Co. v. Wilshire Film Ventures, Inc. [1997] 52 Cal.App.4th 553, 558, 60 Cal.Rptr. 2d 591.) It is abundantly clear here that Statile was primarily answerable for any loss suffered by the applicants and, in equity and good conscience, should have been subrogated to the rights of equity being recognized in the Peoples case. The doctrine of equity being recognized in the Peoples case is that, in good conscience, should have been paid by the one primarily liable. See, e.g., Loving v. Ponderosa Sys., Inc. 479 N.E.2d 531, 536-37 (Ind.1985). When a claim based on subrogation is recognized, "a court substitutes another person in the place of a creditor, so that the person in whose favor it is exercised succeeds to the right of the creditor in relation to the debt." " Matter of Estate of Dornie, 628 N.E.2d 1227, 1230 n. 4 (Ind.Cl.App.1994). It is settled that "[s]ubrogation confers no greater right than the creditor had at the time the surety or indemnitor became subrogated. The subrogator [sic] insurer stands in the same position as the creditor, for one cannot acquire by subrogation what another, whose rights he claims, did not have." " American States Ins. Co. v. Williams, 151 Ind.App. 99, 106, 278 N.E.2d 295, 300 (1972) (internal quotation marks and citation omitted). The ultimate purpose of the doctrine, as with other equitable principles such as contribution, is to prevent unjust enrichment. 73 Am.Jur. 20 Subrogation " 4 (1974). This doctrine is not limited to insurance contracts, and it is not limited to the payment of medical bills allegedly caused by Kellenberger's negligence. Kellenberger to that extent; but (2) Erie gets no more than George had before the payment.	"Does subrogation apply whenever a party, not acting as a volunteer, pays the debt of another that, in good conscience, should have been paid by one primarily liable?"	Subrogation - Memo 286- RM C.docx	R055-002384227-R055-003384229	Condensed, SA	0.87	0	1	0	1	1		
2358	Thompson v. Int'l Bus. Machines Corp. 800 F. Supp. 341	413+1	Employer responsibility for industrial accidents in New York is as virtually automatic as the responsibility of an employer for the payment of workers' compensation benefits. The employer's responsibility for the payment of workers' compensation benefits is a matter of public policy, and the elimination of the risk of tort damage suits. See Arizona Employers Liability Case (Arizona Copper v. Hammer), 250 U.S. 400, 39 S.Ct. 553, 63 L.Ed. 1058 (1919). An end-run around such protection of employees occurs when an injured employee can sue a third party which can in turn implead the employer. This is only applicable to a narrow category of workplace accidents involving third parties and alleged employer negligence. It is a procedural result of third party practice rather than a substantive rule of law. See National Casualty Co. v. Poughkeepsie, 812 F.Supp. 439, 441 & n. 3 (S.D.N.Y.1993).	Under New York law, employer responsibility for industrial accidents is basically governed by no-fault workers compensation system providing for the payment of limited amount in return for elimination of risk of tort damage suits.	Is an employer's responsibility for industrial accidents governed by the no-fault workers compensation system?	Workers Compensation - Memo 286- RM C.docx	R055-002385255-R055-003385526	Condensed, Order, SA	0.73	1	1	0	1	1	

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						Subrogation - Memo 397- RM C.docx	R055-003285973-R055-003285975	Condensed, SA	0.62	839	1	14,873	21,876	9,029	
2359	Chicago Title Ins. Co. v. AMZ Ins. Servs., 188 Cal. App. 4th 401	366+1	Subrogation arises when one party (the subrogee) indemnifies or pays the principal debtor's obligation to the creditor or claimant (the subrogor). (Morgan Creek Residential v. Kemp (2007) 153 Cal.App.4th 675, 690, 63 Cal.Rptr.3d 232.) The subrogee succeeds to the claimant's position or rights against the principal debtor or obligor. "By undertaking to indemnify or pay the principal debtor's obligation to the creditor or claimant, the 'subrogee' is equitably subrogated to the claimant (or 'subrogor'), and succeeds to the subrogor's rights against the obligor." A party claiming to be equitably subrogated to the rights of a creditor must meet these requirements: (1) the subrogee made payment to protect the creditor's own interest; (2) the subrogee must not have acted as a volunteer; (3) the debt paid must be one for which the subrogee was not primarily liable; (4) the entire debt must have been paid; and (5) subrogation must not cause injustice to the rights of others. (Calle v. United California Bank (1978) 20 Cal.3d 694, 704, 144 Cal.App.751, 576 P.2d 466).	A party claiming to be equitably subrogated to the rights of a creditor must meet these requirements: (1) the subrogee made payment to protect the subrogee's own interest; (2) the subrogee must not have acted as a volunteer; (3) the debt paid must be one for which the subrogee was not primarily liable; (4) the entire debt must have been paid; and (5) subrogation must not cause injustice to the rights of others. (Calle v. United California Bank (1978) 20 Cal.3d 694, 704, 144 Cal.App.751, 576 P.2d 466).	What requirements must a party claiming to be equitably subrogated meet?										
2360	Bentley House Ltd. v. 989 3rd Ave., 118 A.D.3d 575	307A+697	This action was dismissed pursuant to CPLR § 326. After numerous delays by former counsel in filing a note of issue. Although no medical evidence was submitted, the motion court vacated the dismissal, accepting the affidavit of a family member and the affirmation of current counsel, former counsel's son, that his 82-year-old father suffers from diminished mental acuity and memory problems (see Goldstein v. Meadows Redevelopment Co. Owners Corp., 146 A.D.3d 509, 511, 846 N.Y.S.2d 384, [2d Dept.2007]). On an application to vacate the dismissal of a complaint, the court has discretion to use procedural rules to delay and the adequacy of the merits of the action are assigned to the sound discretion of the court (see D. Simone v. Good Samaritan Hosp., 100 N.Y.2d 632, 633, 768 N.Y.S.2d 735, 800 N.E.2d 1102 [2003] [Appellate Division]; Medianilla v. Gurman, 272 A.D.2d 146, 148, 707 N.Y.S.2d 432 [1st Dept. 2000] [Supreme Court]).	On an application to vacate the dismissal of a complaint, assessment of the sufficiency of the excuse proffered for the delay and the adequacy of the merits of the action are assigned to the sound discretion of the court.	Prerital Procedure - Memo 11265 - C - MS_64216.docx			Condensed, SA	0.77	0	1	0	1		
2361	Kedzie & 103rd Currency Exch. v. Hodje, 156 Ill. 2d 112	307A+686.1	The phrase "affirmative matter" encompasses any defense other than a new or independent allegation of the plaintiff's cause of action. (See R. Michael, Illinois Practice § 17 (1989)). For that reason, it is recognized that a section 2-615(a) (b) motion to dismiss admits the legal sufficiency of the plaintiff's cause of action much in the same way that a section 2-615 motion to dismiss admits a complaint well-pleaded facts. Barber-Cushman, 236 Ill.App.3d at 11073, 177 Ill. Dec. 841, 609 N.E.2d 1215.	Phrase "affirmative matter" in statute, permitting dismissal on ground that claim asserted against defendant is barred by other "affirmative matter" avoiding the legal effect of or defeating the claim, encompasses any defense other than negation of essential allegations of plaintiff's cause of action and for this reason, such a motion admits legal sufficiency of plaintiff's cause of action much in the same way that motion to dismiss based upon defects in pleadings admits complaint's well-pleaded facts. Ill.Rev.Stat.1989, ch. 110, P.2-615, 2-615(a)(9).	Will an affirmative matter encompass any defense other than a negation of the essential allegation of the plaintiff cause of action?	Prerital Procedure - Memo 11373 - C - NE_64678.docx	R055-003294415-R055-003294415	Condensed, SA, Sub 0.1	0	0	1	1	1	1	
2362	State Farm Mut. Auto. Ins. Co. v. Johnson, 18 So. 3d 1099	366+1	State Farm contends that its complaint states a claim for equitable subrogation. We agree. A cause of action for equitable subrogation arises where: (1) the subrogee made the payment to protect his or her own interest; (2) the subrogee did not act as a volunteer; (3) the subrogee was not primarily liable for the debt; (4) the subrogee paid off the entire debt; and (5) subrogation would not work any injustice to the rights of a third party. Dade County Sch. Bd., 731 So.2d at 616. In tort cases, the party seeking subrogation must have obtained a release for the other party responsible for the debt. Id. at 647; Welch v. Complete Care Corp., 618 So.2d 645, 648 (Fla. 2d DCA 2002).	Does a cause of action for equitable subrogation arise where the subrogee paid off the entire debt?	Subrogation - Memo 322- RM C.docx	R055-003296637-R055-003296637	Condensed, SA	0.49	0	1	0	1			
2363	United States v. Aguilar, 610 F.2d 1296	133H+95.1	Once Jeopardy attaches, as it did for Virgen Palenuech when the jury was sworn to try this case, Illinois v. Somerville, 410 U.S. 458, 467-68, 93 S.Ct. 1066, 35 L.Ed.2d 422 (1973), a criminal defendant normally will not lose the opportunity to seek a favorable verdict from the jury and will not be required to stand trial a second time. Arizona v. Washington, 434 U.S. 497, 503-504, 98 S.Ct. 824, 823-30, 54 L.Ed.2d 717 (1978); Wade v. Hunter, 336 U.S. 684, 688-90, 69 S.Ct. 834, 93 L.Ed. 974 (1949). An exception to this rule is made if the defendant consents to a retrial, United States v. Kesler, 530 F.2d 1246, 1255 (5th Cir. 1976) or if a retrial before a new jury is mandated by some form of manifest necessity, United States v. Kin Ping Chung, 485 F.2d 689, 690-91 (5th Cir. 1973). E. Wade v. Hunter, 336 U.S. at 690-92, 69 S.Ct. 834 (witness temporarily unavailable during war); Simmons v. United States, 142 U.S. 148, 12 S.Ct. 171, 35 L.Ed 968 (1891) (juror pre-judged); United States v. Akford, 516 F.2d 941, 947-49 (5th Cir. 1975) (mere convenience not enough).	A cause of action for equitable subrogation arises where: (1) the defendant consents to a retrial or if a retrial before new jury is mandated by some form of manifest necessity.	Once Jeopardy attaches, will a criminal defendant normally not lose the opportunity to seek a favorable verdict from the jury and will not be required to stand trial a second time, exception to that rule is made if defendant consents to a retrial or if a retrial before new jury is mandated by some form of manifest necessity.	Double Jeopardy - Memo 568 - C - SK_68347.docx	R055-003286710-R055-003286711	Condensed, SA, Sub 0.7	0	1	1	1	1	1	
2364	Green Tree Servicing v. U.S. Bank Nat'l Ass'n, N.D., 192 P.3d 1014	366+40	Five factors are conditions precedent to the application of equitable subrogation: (1) the subrogee made the payment to protect his or her own interest; (2) the subrogee did not act as a volunteer; (3) the subrogee was not primarily liable for the debt; (4) the subrogee paid off the entire debt; and (5) subrogation would not work any injustice to the rights of the junior lienholder. Hicks v. Lofgren, supra, 225 P.3d at 456.	Five factors are conditions precedent to the application of equitable subrogation in the mortgage context: (1) the subrogee made the payment to protect his or her own interest; (2) the subrogee did not act as a volunteer; (3) the subrogee was not primarily liable for the debt; (4) the subrogee paid off the entire debt; and (5) subrogation would not work any injustice to the rights of the junior lienholder; those five factors are, however, invoked only within the overall context of equity and the specific facts of each case such that, even if they are satisfied, the court then considers whether the party seeking subrogation acted with equitable regard for the junior lienholder's position such that application of the doctrine would be inequitable.	Which are the five conditions precedent to the application of equitable subrogation?	Subrogation - Memo 152 - AMG C.docx	R055-003297928-R055-003297929	SA, Sub	0.43	0	0	1	1		

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	Parsi v. Goldman, Sachs & Co., 710 F.3d 483	251+121	The Supreme Court has consistently interpreted the FAA as establishing a "federal policy favoring arbitration agreements." <i>CompacCredit Corp. v. Greenwood</i> , ___ U.S. ___, 133 S.Ct. 665, 669, 181 L.Ed.2d 586 (2012) (internal quotation marks omitted); see also <i>AT&T Mobility LLC v. Concepcion</i> , ___ U.S. ___, 131 S.Ct. 1740, 1746, 179 L.Ed.2d 742 (2011); <i>Gliner v. Interstate/Johnson Lane Corp.</i> , 500 U.S. 20, 25, 113 S.Ct. 1647, 114 L.Ed.2d 26 (1991); <i>Dan Witer Reynolds, Inc. v. Byrd</i> , 470 U.S. 213, 218, 105 S.Ct. 1238, 84 L.Ed.2d 158 (1985); <i>Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.</i> , 460 U.S. 1, 24, 103 S.Ct. 927, 74 L.Ed.2d 765 (1983). This preference for enforcing arbitration agreements applies even when the claims at issue are federal statutory claims, unless the FAA's mandate has been "overridden by a contrary congressional command." <i>CompacCredit</i> , 133 S.Ct. at 669 (internal quotation marks omitted); see also <i>Gliner</i> , 500 U.S. at 26, 113 S.Ct. 1647. "By agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral, rather than a judicial forum." <i>Mitsubishi Motor Corp. v. Soler Chrysler-Plymouth, Inc.</i> , 473 U.S. 614, 628, 105 S.Ct. 3346, 87 L.Ed.2d 444 (1985). Moreover, even when the parties to the agreement are not in a contractually bargained-for relationship, the statute will continue to serve both its remedial and deterrent function. <i>Gliner</i> , 500 U.S. at 28, 113 S.Ct. 1647 (emphasis added).	Even claims arising under a statute designed to further important social policies may be arbitrated, because so long as the prospective litigant effectively may vindicate its statutory cause of action in the arbitral forum, the statute will continue to serve both its remedial and deterrent function.	Can claims arising under a statute designed to further important social policies be arbitrated?	Alternative Dispute Resolution - Memo 399 - RG.docx	R055-00329805-R055-00329806	Condensed, SA	0.82	839	1	15,344	14,873	21,876	9,029
2365	Home Ins. Co. v. Mississippi Ins. Guar. Ass'n, 304 So. 2d 95	366+1	Home claims that it has an "assignment" of all claims from Smith, and, since Smith's claims would have been covered under the statute, Home's claims are covered under the statute. However, even though Home's document is called an "assignment," it really is a disguised subrogation attempt. Subrogation is defined as "the substitution of one party for another whose debt the party pays, entitling the paying party to rights, remedies, or securities that would otherwise belong to the debtor." <i>Black's Law Dictionary</i> 1158 (7th ed.2000). To be entitled to subrogation under this context, a party must show that he has paid for something that another, not himself, is legally obligated to pay. Here, Home was legally obligated to pay the entire judgment amount because Home refused to settle within the \$500,000 policy limits. Therefore, under our current law, the policy limits increased to encompass the judgment amount. <i>Hartford Accident & Indem. Co. v. Foster</i> , 528 So.2d 255, 265 (Miss.1988) ("When a suit covered by a liability insurance policy is for a sum in excess of the policy limits, and an offer of settlement is made within the policy limits, the insurer has a fiduciary duty to look after the insured's interest at least to the same extent as its own, and also to make a knowledgeable, honest and intelligent evaluation of the claim commensurate with its ability to do so."). Failure to fulfill this fiduciary duty makes the liability carrier liable for all damages resulting from the refusal to settle, which in this case is the excess of the judgment. Id. In essence, Home refused to settle within the policy limits even though it knew a finding of liability was certain. Furthermore, Home failed to even inform Smith of the settlement offer. Since Home's refusal to settle made it liable for the entire amount of judgment, it, as the primary insurer, is responsible for payment and is not entitled to subrogation.	"Subrogation" is the substitution of one party for another whose debt the party pays, entitling the paying party to rights, remedies, or securities that would otherwise belong to the debtor.	Is subrogation the substitution of one party for another whose debt the party pays, entitling the paying party to rights, remedies, or securities that would otherwise belong to the debtor?	Subrogation - Memo 234 - VG C.docx	R055-003298412-R055-003298414	Condensed, SA, Sub 0.9	0	1	1	1	1	1	
2366	Greer v. Buglietta, 141 Cal. App. 4th 1150	307A+3	Trial judges enjoy "broad authority" over the admission and exclusion of evidence. <i>Peat, Marwick, Mitchell & Co. v. Superior Court</i> (1988) 200 Cal.App.3d 272, 288, 245 Cal.Rptr. 873. The motion in limine is not expressly authorized by statute, but is within the trial courts' "inherent power to entertain and grant." [Citation]. The scope of such motion is not defined by statute, but is limited to the admission or exclusion of any kind of evidence which could be objected to at trial, either as irrelevant or as subject to discretionary exclusion as unduly prejudicial." [Citation]. Its purpose is to avoid the unfairness caused by the presentation of prejudicial or objectionable evidence to the jury, and the "obviously futile attempt to 'turn the bell'." (Id.)	The purpose of a motion in limine is to avoid the unfairness caused by the presentation of prejudicial or objectionable evidence to the jury, and the obviously futile attempt to "turn the bell."	Is the purpose of a motion in limine to avoid the unfairness caused by the presentation of prejudicial or objectionable evidence to the jury, and the obviously futile attempt to "turn the bell"?	Pretrial Procedure - Memo 444 - C - TJ.docx	R055-003299067-R055-003299068	Condensed, Order, SA	0.72	1	1	0	1	1	
2367	Shams v. Hassan, 229 N.W.2d 848	307A+554	Unlike other grounds for dismissal, however, a court considering a motion to dismiss for lack of personal jurisdiction must make factual findings to determine whether it has personal jurisdiction over the defendant. <i>Capital Promotions, L.L.C. v. Don King Prods., Inc.</i> , 756 N.W.2d 828, 832 (Iowa 2008). Those findings are binding if supported by substantial evidence. <i>Hodges v. Hodges</i> , 572 N.W.2d 549, 551 (Iowa 1997).	Unlike other grounds for dismissal, a court considering a motion to dismiss for lack of personal jurisdiction must make factual findings to determine whether it has personal jurisdiction over the defendant.	Unlike other grounds for dismissal, must a court considering a motion to dismiss for lack of personal jurisdiction make factual findings to determine whether it has personal jurisdiction over the defendant?	Pretrial Procedure - Memo 4235 - C - KG.docx	R055-00330174-R055-003301725	Condensed, SA	0.51	0	1	0	1		
2368	Rinn v. First Union Nat. Bank of Maryland, 176 B.R. 401	366+1	Broadly defined, subrogation is the substitution of one person in the place of another with reference to a lawful claim or right. 73 Am.Jur.2d 111 (1982). Originating in equity, the doctrine's operation has been governed by equitable principles. <i>Compania Anonima Venezolana de Navegacion v. A.J. Peres Export Co.</i> , 303 F.2d 692, 697 (5th Cir.1962), cert. denied, 371 U.S. 942, 83 S.Ct. 321, 9 L.Ed.2d 276. Subrogation is intended to provide relief against loss to a meritorious creditor who has paid the debt of another. <i>Bachmann v. Glazier</i> , 316 Md. 405, 559 A.2d 965, 388 (1989), and to obtain an equitable adjustment between parties who have suffered losses. <i>Wright v. Wright</i> , 1999 WL 1000000 (Iowa 1999) (quoting <i>Collins v. Blue Cross of Virginia</i> , 213 Va. 540, 193 S.Ct.2d 782, 784 (1973)).	Subrogation is intended to provide relief against loss to meritorious creditor who had paid debt of another, and to obtain equitable adjustment between parties by securing ultimate discharge of debt by person who in equity ought to pay it.	Is the doctrine of equitable subrogation intended to provide relief against loss to a meritorious creditor who has paid debt of another?	Subrogation - Memo 216 - RM C.docx	R055-003302613-R055-003302614	Condensed, SA	0.73	0	1	0	1		
2369															

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential Between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
2370	Baker v. Feltner, 952 S.W.2d 743	30+2206	A trial court has the inherent power, in the exercise of sound judicial discretion, to dismiss a case for failure to prosecute with due diligence, and such discretion is shared. <i>Shirrell v. Missouri Edison Co.</i> , 535 S.W.2d 446, 448 (Mo banc 1976); <i>Euge v. Lemay Bank & Trust Co.</i> , 386 S.W.2d 398, 399 (Mo banc 1965); <i>Roulhe v. Christian Hosp.</i> , 902 S.W.2d 333, 337 (Mo App 1995). A discretionary ruling is presumed to be correct, and the burden of demonstrating an abuse of discretion is on the appellant. <i>Anderson v. Robertson</i> , 402 S.W.2d 589, 593 (Mo App 1966).	Trial court has inherent power, in the exercise of sound judicial discretion, to dismiss a case for failure to prosecute with due diligence, and such discretion is shared. <i>Shirrell v. Missouri Edison Co.</i> , 535 S.W.2d 446, 448 (Mo banc 1976); <i>Euge v. Lemay Bank & Trust Co.</i> , 386 S.W.2d 398, 399 (Mo banc 1965); <i>Roulhe v. Christian Hosp.</i> , 902 S.W.2d 333, 337 (Mo App 1995). A discretionary ruling is presumed to be correct, and the burden of demonstrating an abuse of discretion is on the appellant. <i>Anderson v. Robertson</i> , 402 S.W.2d 589, 593 (Mo App 1966).	"Does the court have inherent power, in the exercise of sound judicial discretion, to dismiss a case for failure to prosecute with due diligence?"	Pretrial Procedure - 17.791 - C - 58, 55630.docx	R055-00336487-R055-00336488	Condensed SA	0.63	839 0	15,344 0	14,873 0	21,876 1	9,079
2371	Williams v. Curtis-Wright Corp., 694 F.2d 900	22+142	"Subrogation is a right which is founded upon equity and justice and accrues when one person for the protection of his own interests, pays a debt for which another is primarily liable." <i>Wimberly v. Am. Cas. Co. v. Reading, Pa. (CMA)</i> , 584 S.W.2d 200, 203 (Tenn 1979) (quoting <i>Anos v. Central Coal Co.</i> , 38 Tenn App 626, 277 S.W.2d 457, 462 (1954)). With respect to the insured and as to the rights of the insured against a third party." <i>York v. Sevier County Ambulance Auth.</i> , 8 S.W.3d 616, 618-19 (Tenn 1999) [citing <i>Wimberly</i> , 584 S.W.2d at 203]. The Tennessee Supreme Court has held that, "in the absence of legal compulsion to pay the debt of another, voluntary payment of another's debt, absent fraud, accident, mistake, or by contract with the payee, does not entitle one to subrogation." <i>Hubbie v. Dyer Nursing Home</i> , 188 S.W.3d 525, 538 (Tenn 2006).	Act of state doctrine should not be applied to thwart legitimate American regulatory goals in absence of showing that adjudication may hinder international relations.	Should the act of state doctrine be applied to thwart legitimate American regulatory goals in absence of showing that adjudication may hinder international relations?	International Law - Memo 539 - Th.docx	R055-003310893-R055-003310895	Condensed SA	0.73	0 0	1 0	0 0	1 1	
2372	First Am. Title Ins. Co. v. Cumberland Cty. Bank, 633 F. Supp. 2d 566	366+2	"Tower contends that notwithstanding the terms of the mortgage contract, under principles of equitable subrogation, it is entitled to a personal judgment against Smart for tax reimbursement. Equitable subrogation may be invoked to prevent unjust enrichment when one person confers upon another a benefit that is not required by legal duty or contract. A right to subrogation is often asserted by one who pays a debt for another, and the payment is made to the creditor, such as rights against the debtor's security. Subrogation to the creditor's rights is available, however, only when the debtor was enriched unjustly; thus, the payor who confers a benefit as a "mere volunteer" is not entitled to this remedy. <i>Dury v. Saunders</i> , 77 Tex. 278, 13 S.W. 1030, 1031 (1890).	Under Tennessee law, "subrogation" is right founded upon equity and justice, and accrues when one person, for protection of his own interests, pays debt for which another is primarily liable.	"Is subrogation right founded upon equity and justice, and accrues when one person, for the protection of his own interests, pays debt for which another is primarily liable?"	Subrogation - Memo 280 - AMG C.docx	R055-003311606-R055-003311607	SA, Sub	0.79	0 0	0 1	1 1		
2373	Smart v. Tower Land & Inv. Co., 597 S.W.2d 333	366+1	"The concept of equitable subrogation, as developed by case law, is that a claim may normally be subordinated only if its holder is guilty of some misconduct. It is a remedial, not a penal, measure that is used only sparingly." <i>Collier on Bankruptcy</i> , §10.05[1] (15th ed 2008). This Court has had occasion to address this principle and explained it as follows: Equitable subrogation arises in equity to prevent fraud or injustice and usually arises when (1) the paying party has a liability, claim or fiduciary relationship with the debtor; (2) the party pays to fulfill a debt on behalf of the debtor; (3) the paying party is a secondary creditor; (4) the payment is made to the creditor; (5) the creditor has no own rights or property; <i>Lawder v. Chittenden Trust Co. (In re Lawder)</i> , 2005 WL 4122833 (Bankr.D.Vt. Dec. 15, 2005) [citing <i>Black's Law Dictionary</i> 1440741 (7th ed 1999)].	Equitable subrogation may be invoked to prevent unjust enrichment when one person confers upon another a benefit that is not required by legal duty or contract.	Does the doctrine of equitable subrogation prevent unjust enrichment when one person confers upon another a benefit that is not required by legal duty or contract?	Subrogation - Memo 243 - VS C.docx	R055-003311993-R055-003311995	Condensed SA	0.81	0 0	1 0	0 1	1 1	
2374	In re Hutchins, 400 B.R. 403	366+1	"The concept of equitable subrogation, as developed by case law, is that a claim may normally be subordinated only if its holder is guilty of some misconduct. It is a remedial, not a penal, measure that is used only sparingly." <i>Collier on Bankruptcy</i> , §10.05[1] (15th ed 2008). This Court has had occasion to address this principle and explained it as follows: Equitable subrogation arises in equity to prevent fraud or injustice and usually arises when (1) the paying party has a liability, claim or fiduciary relationship with the debtor; (2) the party pays to fulfill a debt on behalf of the debtor; (3) the paying party is a secondary creditor; (4) the payment is made to the creditor; (5) the creditor has no own rights or property; <i>Lawder v. Chittenden Trust Co. (In re Lawder)</i> , 2005 WL 4122833 (Bankr.D.Vt. Dec. 15, 2005) [citing <i>Black's Law Dictionary</i> 1440741 (7th ed 1999)].	Equitable subrogation arises in equity to prevent fraud or injustice and usually arises when (1) the paying party has a liability, claim or fiduciary relationship with the debtor; (2) the party pays to fulfill a legal duty or because of public policy; (3) the paying party is a secondary debtor; (4) the paying party is a surety; or (5) the party pays to protect its own rights or property.	When does equitable subrogation arise in equity to prevent fraud or injustice?	Subrogation - Memo 330 - RM C.docx	R055-003315472-R055-003315473	Condensed SA	0.57	0 0	1 0	0 1	1 1	

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2375	United States v. Swarens, 504 F. Supp. 2d 791.	221-442	The act of state doctrine, which is rooted in separation of powers principles, prevents the courts of one country from sitting in judgment on acts of government of another, done within its own territory. Philippine Nat'l Bank, 397 F.3d 1768, 772 (9th Cir.2/10/05). Liquidators contend that the Government's seizure and potential forfeiture of the Disputed Assets invalidates previously-issued orders of the High Court of Antigua. But the Liquidators have produced no orders from the Antiguan courts that gave specific directions as to the Disputed Assets, nor orders from the Antiguan courts with which the Liquidators have been unable to comply, nor orders of the Antiguan courts that have been invalidated by the United States courts. The court therefore concludes that the orders in the record before this Court only indicate that the Liquidators are generally authorized to act to recover assets and property of Eurofid Bank. (Docket No. 942, Exhs. 3 & 4; Docket No. 1188, Tab 4, Exh. 5.) Such orders are not inconsistent with a determination by this Court that criminal forfeiture is appropriate for the Disputed Assets. Moreover, given that under the "relation back" doctrine of 21 U.S.C. § 853(c), title to the funds and bonds vested in the United States at the time the criminal forfeiture was entered, the Government's seizure of the Disputed Assets is consistent with the United States' interest in recovering the Disputed Assets to the United States before the time they were ever deposited with Eurofid. Cf. U.S. v. Petelo, 178 F.3d 196, 201 (3d Cir.1999). Finally, the Government's positions taken in this matter undercut the separation of powers concerns that motivate the act of state doctrine. See Biglo v. Coca Cola Co., 239 F.3d 440, 452 (2d Cir.2000) ("[T]he applicability of the doctrine depends on the likely impact on international relations that would result from judicial consideration of the foreign sovereign's act. If judicial action would result in a breach of international relations, the act is barred. If not, the act is not barred. . . .").	"Act of state doctrine," which is rooted in separation of powers principles, prevents courts of one country from sitting in judgment on acts of government of another, done within its own territory.	"Does the act of state doctrine prevent courts of one country from sitting in judgment on acts of government of another, done within its own territory?"	International Law - Memo # 75 - C - L.docx	R055-0033/4925-R055-0033/4927	Condensed, SA	0.91	839	15,944	14,873	21,876	9,079
										0	1	0	1	
2376	Greenberg Traurig of New York, P.C., v. Moody, 161 S.W.3d 56	307A-3	A motion in limine is a procedural device that permits a party to identify, prior to trial, certain evidentiary rulings the trial court may be asked to make. Weidner v. Sanchez, 14 S.W.3d 353, 363 (Tex.App.Houston [14th Dist.] 2000, no pet.). The purpose of the motion in limine is to prevent the other party from asking prejudicial questions or introducing prejudicial evidence in front of the jury without first asking the trial court's permission. (Weidner v. Sanchez, 14 S.W.3d 353, 363 (Tex.App.Houston [14th Dist.] 2000, no pet.).) A motion in limine preserves nothing for review, a party must object at trial when the testimony is offered to preserve error for appellate review. Hartford Acc. & Indem. Co., 369 S.W.2d at 335. However, not all pretrial motions are motions in limine. See Huckabee v. A.G. Perry & Son, Inc., 20 S.W.3d 194, 203 (Tex.App.-Tearstka 2000, pet. denied).	"A motion in limine" is a procedural device that permits a party to identify, prior to trial, certain evidentiary rulings the trial court may be asked to make; the purpose of the motion in limine is to prevent the other party from asking prejudicial questions or introducing prejudicial evidence in front of the jury without first asking the trial court's permission.	"Is a motion in limine a procedural device that permits a party to identify, prior to trial, certain evidentiary rulings the trial court may be asked to make; the purpose of the motion in limine is to prevent the other party from asking prejudicial questions or introducing prejudicial evidence in front of the jury without first asking the trial court's permission?"	Pretrial Procedure-- Memo # 30 - C - K.docx	R055-0033/5161-R055-0033/5162	Condensed, SA	0.6	0	1	0	1	
										0	1	0	1	
2377	Jackson v. Bayne, 209 S.W.3d 910	307A-3	We begin our consideration of the parties' arguments by asking that, as Mr. Jackson points out, this Court recently opined that a motion in limine should not be used as a vehicle to preclude a claim or defense or as a substitute for a motion for summary judgment. Dura nv. Hyundai Motor America, Inc., 271 S.W.3d 178, 192 (Tem.Ct.App.2008). Rather, a motion in limine provides a means by which a party may seek guidance from the trial court regarding an evidentiary question in order to formulate their trial strategy. Id. It essentially substitutes for an evidentiary objection that would be made at trial. A motion in limine is not subject to the same safeguards as a motion for summary judgment or for pretrial summary judgment. Id.	A motion in limine provides a means by which a party may seek guidance from the trial court regarding an evidentiary question in order to formulate their trial strategy; it is essentially substitutes for an evidentiary objection which may be made at trial.	Does a motion in limine provide a means by which a party may seek guidance from the trial court regarding an evidentiary question in order to formulate their trial strategy?	Pretrial Procedure-- Memo # 14 - C - K.docx	R055-0033/5789-R055-0033/5790	Condensed, SA	0.66	0	1	0	1	
										0	1	0	1	
2378	Swarey v. Stephenson, 222 Md. App. 65	307A-554	The burden rests with the Swareys to "at least make[] a prima facie showing of the jurisdictional facts to show that the individual defendant regularly do or solicit business in Maryland, engage in another persistent course of conduct in the state, or derive substantial revenue from goods, services, or information that are sold or distributed by the defendant in this state." Brownlee Pub. Co., 445 F.Supp. 780, 786 (D Md.1978) (citing Weller v. Cromwell Oil Co., 504 F.2d 937 (6th Cir.1974); see also Hoffeld v. Power Chem. Co., 382 F.Supp. 388 (D Md.1974)). However, because courts have recognized that a personal jurisdiction analysis is necessarily fact-specific, discovery should be permitted where the court's determination would otherwise rest upon a meager record. Androustos v. Fairfax Hospital, 323 Md. 634, 638-39, 594 A.2d 574 (1991). Indeed, "[w]hen a motion to dismiss is based on the merits of the case, the court is required to consider all relevant facts and circumstances, including affidavits or hold an evidentiary hearing on the motion if the facts are in dispute." Evers v. Cnty. Council of Prince George's, 185 Md.App. 251, 256, 969 A.2d 1024 (2009) (citing Beyond Systems, Inc. v. Realtime Gaming Holding Co., 388 Md. 1, 17-12, 878 A.2d 657 (2005)).	When a motion to dismiss is based upon lack of jurisdiction, the court can consider affidavits or hold an evidentiary hearing on the motion to dismiss without converting the motion into a motion for summary judgment.	"When a motion to dismiss is based upon lack of jurisdiction, can the court consider affidavits or hold an evidentiary hearing on the motion to dismiss without converting the motion into a motion for summary judgment?"	Pretrial Procedure - Memo # 5762 - C - B.docx	R055-0033/9410-R055-0033/9411	Condensed, SA	0.83	0	1	0	1	
										0	1	0	1	

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	Norcon Builders v. GMP Homes VG, 161 Wash. App. 474	364+1	"Equitable subrogation provides an exception to the first in time rule by permitting a person who pays off an encumbrance to assume the same lien priority position as the holder of the previous encumbrance." Bank of America, N.A. v. Wells Fargo Bank, N.A., 126 Wash.App. 710, 714, 109 P.3d 863 (2005), rev'd on other grounds, Bank of Am., N.A. v. Prestanor Corp., 160 Wash.2d 560, 160 P.2d 347 (2007), for example, suppose A, a homeowner, has two mortgages: one recorded first by Bank B and one recorded second by Bank C. Our recording act says B has a higher priority because it recorded first, putting the world on notice as to its interest in A's land. RCW 65.08.070, 710 P.2d 347. If D fully discharges B's debt, then equitable subrogation substitutes D for B, so D has a higher priority than C, even though D recorded after Prestanor. 160 Wash.2d at 564-565, 160 P.2d 347. "As an equitable remedy, subrogation is designed to avoid one person receiving an unearned windfall, i.e., the intervening lienholder through an act of another person. The purpose of subrogation is to prevent the mortgagee who paid the prior debt Restatement (Third) of Property (Mortgages) § 7.6.	As an equitable remedy, subrogation is designed to avoid one person receiving an unearned windfall, i.e., the intervening lienholder through an act of another person receiving an unearned windfall?	Is subrogation an equitable remedy designed to avoid one person receiving an unearned windfall?	Subrogation - Memo 240-VC.docx	RCSS-0033-0058-RCSS-003330099	Condensed, Order, SA	0.83	1	1	15,344	14,873	21,876	9,029
2379															
2380	State v. Thruway, 157 N.J. Super. 265	183+10	If the instrument is one which on its face would be manifestly void or of no legal effect even if genuine, it is no forgery. 2 Wharton's Criminal Law and Procedure, § 643 (Anderson 1957). As held in State v. Robinson and Chittenden, 16 N.J.L. 507, 509 (Sup.Ct.1838), the alteration must be of a material part of the instrument. "for no alteration of a genuine instrument will amount to this crime unless it changes the operation and effect of the instrument." See also, State v. Redtrake, 39 N.J.L. 365, 369 (1840). The instrument must be one which is not void on its face. The instrument which has real or apparent efficacy to require 2 Wharton, op. cit., at 433. As stated in 37 C.J.S. Forgery, § 12 at 41 in order that an alteration may constitute forgery it is essential that it be material. A material alteration of an instrument within the meaning of the rule is one which makes it speak a language different in legal effect from that which it originally spoke, or which carries with it some change in the rights, interests, or obligations of the parties to the writing.	What is a material alteration that constitutes forgery?	Is subrogation an equitable remedy designed to avoid one person receiving an unearned windfall?	Forgery - Memo 22 - AAA.docx	RCSS-0032-84972-RCSS-003284973	Condensed, SA	0.67	0	1	0	1	1	1
	Dean Water Reynolds v. McCoy, 995 F.2d 649	257+112	Where parties agree to submit any conflicts, breaches or other grievances arising under a contract to an arbitrator, they are, naturally enough, bound by that agreement, and a party may not unilaterally decide, at the last minute, that it would prefer to take the disputed matter to court. AT & T Technologies, Inc. v. Communications Workers of America, 475 U.S. 643, 648-49, 106 S.Ct. 1415, 1418, 89 L.Ed.2d 648 (1986). However, the questions of whether certain parties are contractually bound to arbitrate their disputes and whether the arbitrator has authority to decide a dispute cannot be foreclosed "to arbitrate the arbitrability issue." Litton Financial Printing v. N.R.R., 501 U.S. 190, ___, 111 S.Ct. 2215, 2226, 115 L.Ed.2d 177 (1993) (quoted in Roney and Co., 981 F.2d at 898).	Where parties agree to submit any conflicts, breaches or other grievances arising under contract to arbitrator, they are bound by that agreement, and party may not unilaterally decide, at the last minute, that it would prefer to take the disputed matter to court?"	Can a party who has agreed to arbitration, unilaterally decide to take the disputed matter to court?	Alternative Dispute Resolution - Memo 69- JS.docx	LEGALASE-00001432-LEGALASE-00001433	Condensed, SA	0.66	0	1	0	1	1	1
2381															
	Gilliam v. Ordway, 147 F.Supp.2d 654	237+1	Under Michigan law, the elements of a defamation claim are: (1) a false and defamatory statement concerning the plaintiff; (2) an unprivileged communication of the statement to a third party; (3) knowledge on the part of the publisher; and (4) either actual malice of the plaintiff or special harm caused by publication. Mitan v. Campbell, 474 Mich. 21, 706 N.W.2d 420, 421 (2005). "[I]n accusation of the commission of a crime is defamatory per se, meaning that special harm need not be proved." Kevorkian v. AMA, 237 Mich.App. 1, 602 N.W.2d 233, 237 (1999); see also Burdensky v. Elias Bros. Big Boy Restaurants, 240 Mich.App. 223, 613 N.W.2d 778, 779 (1999). "Where a plaintiff brings an action for defamation, the plaintiff has the burden of proving that the defendant's statement is false, that the defendant knew the statement was false, or that the defendant acted with reckless disregard for the truth, actual malice." That is, knowledge of falsity or reckless disregard for the truth need not be shown. See Kevorkian, 602 N.W.2d at 237-38. Rather, the proper standard is negligence. See Mitan, 706 N.W.2d at 421.	What are the essential elements of a defamation?	Who decides questions of venue?	Libel and Slander - Memo 1 - RM.docx	LEGALASE-00002192-LEGALASE-00002193	SA, Sub	0.65	0	0	1	1	1	1
2382															
	Farmer Co-op. Exch. v. Trill, 255 N.C. 202	40+51	Defendant's motion for the removal of the case from Wake County superior court to the superior court of Union County for trial to promote the convenience of witnesses and the ends of justice, made pursuant to the provisions of G.S. § 1-483, subd. 2, presents a question of venue, not jurisdiction, and is within sound discretion of trial judge, and is not subject to review except for manifest abuse of discretion. G.S. § 1-483, subd. 2.	A motion by a defendant for removal of case from superior court of one county to superior court of another county for trial to promote convenience of witnesses and ends of justice, presents a question of venue, not jurisdiction, and is within sound discretion of trial judge, and is not subject to review except for manifest abuse of discretion. G.S. § 1-483, subd. 2.	Who decides questions of venue?	DD468.docx	LEGALASE-00116484-LEGALASE-00116485	Condensed, SA, Sub	0.33	0	1	1	1	1	1
2383															
	Bd. of Sup's of Middle Paxton Twp. v. Dept of Envtl. Res., 669 A.2d 418	1,491+19	In order for the result of deemed approval to occur from failure of Department of Environmental Resources (DER) to act within statutorily prescribed time period, there must be explicit language in the statute providing for deemed approval. Department of Environmental Resources v. Washington County, 157 Pa. Commw. 1, 659 A.2d 172 (1995), appeal dismissed as improvidently granted, 536 Pa. 431, 639 A.2d 1171 (1994). The language of "7.11.16 satisfies this requirement.	In order for the result of deemed approval to occur from failure of Department of Environmental Resources (DER) to act within statutorily prescribed time period, there must be explicit language in statute providing for deemed approval.	When can the Department of Environmental Resources (DER) failure to act within a statutorily prescribed time period be considered a deemed approval?	DD0027.docx	LEGALASE-00117281-LEGALASE-00117282	Order, SA, Sub	0.48	1	0	1	1	1	1
2384															

ROW	Judicial Opinion	WINS Topic + Key Number	Judicial Opinion Text	Copied Headnote	Memo Question	Memo Filename	Bates Number	Headnote Category	Length Differential between Judicial Opinion Text and Headnote	Order	Condensed	Substantive Additions	Selection & Arrangement	Multiple Differences
	Drager by Gutman v. Aluminum Indus. Corp., 495 N.W.2d 879	3134+133	To determine whether a manufacturer has a duty to warn, the court goes to the event causing the damage and looks back to the alleged negligent act. If the connection is too remote to impose liability as a matter of public policy, the courts then hold there is no duty, and consequently no liability. On the other hand, if the consequence is direct and is the type of occurrence that was or should have been reasonably foreseeable, the courts then hold as a matter of law a duty exists. <i>Gutman v. F. L. Smith Mfg. Co.</i> , 395 N.W.2d 922, 924 (Minn.1986), quoted in <i>Bulder</i> , 399 N.W.2d at 81. Because appellant's injury resulted neither from an intended use nor an unintended but reasonably foreseeable use, but rather from an accident, we are compelled to conclude that the connection between the injury he sustained and the alleged negligent act is too remote to impose liability as a matter of public policy. Therefore, consistent with the court's reasoning in <i>Gutman</i> , there is no duty to warn.	To determine whether manufacturer has duty to warn, court goes to event causing damage and looks back to alleged negligent act. If connection is too remote to impose liability as matter of public policy, courts then hold there is no duty and consequently no liability, but if consequence is direct and is type of occurrence that was or should have been reasonably foreseeable, courts then hold as matter of law duty exists.	Is the manufacturer held liable in a product liability action if the connection between the danger and the alleged negligent act is too remote?	000693.docx	LEGALSE-00117268- LEGALSE-00117269	Condensed, SA	0.57	839 0	1	14,873 0	21,876 1	9,029
2385														
	CECOS Internat'l v. Shank, 79 Ohio App. 3d 1	1485+20	The EBR and an appellate court apply different standards of review to decisions by the Director. In the de novo hearing, the EBR does not stand in the place of the Director of the EPA and may not substitute its judgment for that of the director as to factual issues, but may consider only whether director's actions were unreasonable or unlawful. <i>Northeast Ohio Regional Sewer Dist. v. Shank</i> (1991), 58 Ohio 3d 343, 26, 567 N.E.2d 993, 1002; <i>Citizens Comm't v. Williams</i> (1977), 56 Ohio App.2d 61, 10 O.O. 3d 91, 381 N.E.2d 661; see R.C. 3745.05. Although the EBR has a wide degree of latitude as to the evidence presented in a de novo hearing, the EBR's findings and orders must be based upon the evidence adduced at the hearing before the EBR. <i>Northeast Ohio Regional Sewer Dist.</i> , at 24, 567 N.E.2d at 1000-1001.	In de novo hearing, Environmental Board of Review (EBR) does not stand in place of Director of Environmental Protection Agency (EPA) and may not substitute its judgment for that of director as to factual issues, but may consider only whether director's actions were unreasonable or unlawful.	Can the Environmental Board of Review (EBR) substitute its judgment for that of the Director of the Environmental Protection Agency (EPA) as to factual issues in de novo hearings?	Environmental Law - Memo 78 - MS.docx	LEGALSE-00004678- LEGALSE-00004679	Condensed, SA, Sub	0.64	0	1	1	1	1
2386														
	Redevelopment Auth. of Oil City v. Woodring, 498 Pa. 380	3602+1102	Police power involves the regulation of property to promote health, safety and general welfare, and its exercise requires no compensation to the property owner, even if there is an actual taking or destruction of property, while eminent domain is the power to take property for public use, and compensation must be given for property taken, injured or destroyed. <i>White v. Napoli</i> , 287 Pa. 259, 264, 134 A. 109 (1926).	How is police power different from the power of eminent domain?	How is police power different from the power of eminent domain?	05348.docx	LEGALSE-00080794- LEGALSE-00080795	Condensed, SA	0.15	0	1	0	1	1
2387														
	Nat'l Labor Relations Bd. v. Little River Band of Ottawa Indian Tribal Gov't, 788 F.3d 537	209+210	We stress that the application of general federal statutes to Indian tribes is presumptive; they do not always apply. See, e.g., <i>Michigan v. Bay Mills Indian Cmty.</i> , ___ U.S. ___, 134 S.Ct. 1381, 188 L.Ed.2d 2017 (2014). Our sister circuits have developed and employed a test, set forth in <i>Coeur d'Alene</i> , to determine the exceptions to the presumptive application of a general federal statute: see 751 F.2d at 1116. In <i>Coeur d'Alene</i> , the Ninth Circuit has held that the Occupational Safety and Health Act ("OSHA") applied to commercial activities carried out by an Indian tribal farm that employed some non-member workers and was similar in its operation to other farms in the area. 751 F.2d at 1114. The court rejected the notion that "congressional silence should be taken as an expression of intent to exclude tribal enterprises from the scope of an Act to which they would be subject otherwise." <i>Id.</i> at 1115. Citing <i>Tuscarora</i> , the court applied the presumption that "federal laws generally applicable throughout the United States apply to Indian tribes unless Congress has indicated otherwise." <i>Id.</i> (<i>quoting United States v. Farris</i> , 624 F.2d 890, 893 (9th Cir. 1980)). The court, however, held that this presumption is limited by three exceptions: A federal statute of general applicability that is silent on the issue of applicability to Indian tribes will not apply to them if: (1) the law touches exclusive rights of self-governance in purely intramural matters; (2) the application of the law to the tribe would abrogate rights guaranteed by Indian treaties; or (3) there is proof by legislative history or some other means that Congress intended [the law] not to apply to Indians on their reservations. <i>Id.</i> at 1116 (internal quotations omitted). "In any of these three situations, Congress must expressly apply a statute to Indians before ... it reaches them." <i>Id.</i> (emphasis original). Because the tribe could not show that the application of OSHA regulations to its commercial farm fell within these three exceptions, the court held that the law applied to the tribe. <i>Id.</i> at 1116. The court also noted that the "actual knowledge of the applicant, or imply also a located claim for the vein or lode, the same meaning must be attributed to them in the amended answer; and the fact signified by the statute is well pleaded; for, by the elementary rules of pleading, facts may be pleaded according to their legal effect, without setting forth the particulars that lead to it; and necessary circumstances implied by law need not be expressed in the plea. <i>Bac. Abr. "Pleadings"</i> , 7 Co. Lit. 303b. The fact that the vein or lode was known to exist as contemplated by the statute being well pleaded, although in general terms, is admitted by the demurrer. <i>Eaton v. Southby, Wilkes</i> , 331; <i>Postmaster Gen. v. Ursick</i> , 4 Wash., C. C. 347; <i>Christmas v. Russell</i> , 5 Wall. 290. In order to present the issue discussed in argument, the plaintiff should either have traversed the allegation, or have replied that no claim for the vein or lode had been located at the time in question. We find nothing in the statutes of Colorado which changes the rules of the common law in this respect. See <i>Code Civil Proc.</i> 1877, ___ 48, 49, 52, 61.	When will a statute of general applicability be held to be inapplicable to Indians?	Indians - Memo 19 - TH.doc	LEGALSE-00006238- LEGALSE-00006240	Condensed, SA	0.79	0	1	0	1	1	
2388														
	Sullivan v. Iron Silver Mining Co., 109 U.S. 350	2610+3812	Whether the words "known to exist," as used in the statute, are satisfied by actual knowledge of the applicant, or imply also a located claim for the vein or lode, is a question of fact. The statute is not satisfied by a mere alleged answer, and the fact significantly by the statute is well pleaded; for, by the elementary rules of pleading, facts may be pleaded according to their legal effect, without setting forth the particulars that lead to it; and necessary circumstances implied by law need not be expressed in the plea. <i>Bac. Abr. "Pleadings"</i> , 7 Co. Lit. 303b. The fact that the vein or lode was known to exist as contemplated by the statute being well pleaded, although in general terms, is admitted by the demurrer. <i>Eaton v. Southby, Wilkes</i> , 331; <i>Postmaster Gen. v. Ursick</i> , 4 Wash., C. C. 347; <i>Christmas v. Russell</i> , 5 Wall. 290. In order to present the issue discussed in argument, the plaintiff should either have traversed the allegation, or have replied that no claim for the vein or lode had been located at the time in question. We find nothing in the statutes of Colorado which changes the rules of the common law in this respect. See <i>Code Civil Proc.</i> 1877, ___ 48, 49, 52, 61.	Should necessary circumstances implied by law be expressed in the plea?	Should necessary circumstances implied by law be expressed in the plea?	001537.docx	LEGALSE-00119027- LEGALSE-00119028	Condensed, SA, Sub	0.44	0	1	1	1	1
2389														

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2390	Maurice v. Pub. Util. Comm., 101 Ohio S. 3d 54	317A+101	We defined "public utility" in our decision in A & B Refuse Disposal, Inc. v. Ravenna Twp., Bd. of Trustees (1992), 64 Ohio S.3d 385, 59 N.E.2d 423. A public utility is an enterprise with the following characteristics and functions: (1) it provides essential goods or services that the general public has a right to demand from the utility, (2) it conducts its operation in such a manner as to be a matter of public concern, and (3) it occupies a monopolistic or oligopolistic position in the marketplace by definition, a noncompetitive position).	A "public utility" is an enterprise with the following characteristics and functions: (1) it provides essential goods or services that the general public has a right to demand from the utility, (2) it conducts its operation in such a manner as to be a matter of public concern, and (3) it occupies a monopolistic or oligopolistic position in the marketplace by definition, a noncompetitive position).	Should a public utility conduct its operations in a manner to be of public concern?	01.1605.docx	LEGALCASE-00119017- LEGALCASE-00119018	15,344 0	14,873 0	21,976 1	9,029
2391	State v. Rosepink, 127 Wash. App. 41	209+125	"Indian law asserting treaty rights must establish that their group has preserved its tribal status. United States v. Oregon, 28 F.3d 481, 484 (9th Cir. 1994). The signatory tribe has to establish two separate factors. First, it must show that it has maintained an "organic tribal structure." Id. This can be "shown by establishing that "some defining characteristic of the original tribe persists in an evolving tribal community." " Id. Second, it must show that "a group of citizens of Indian ancestry is descended from a treaty signatory." United States, 520 F.2d at 693.	The signatory tribes have established two separate factors to establish their group has preserved its tribal status for purposes of treaty rights: (1) it must show that it has maintained an organic tribal structure, and (2) it must show that a group of citizens of Indian ancestry is descended from a treaty signatory.	What are the factors to be established by a signatory tribe group to preserve their tribal status for treaty rights?	Indian - Memo 23-TH.doc	LEGALCASE-00006564- LEGALCASE-00006565	1 1	1 1	1 1	1
2392	King v. Young, 304 S.W.2d 224	249+30	In Mackie, the Western District made a clear distinction between the two malice standards required in civil malicious prosecution actions: malice in law and malice in fact. 931 S.W.2d at 179-180. The Court held that a showing of malice in law is required in a civil malicious prosecution action against a non-attorney. Id. at 180. Malice in the law requires only that the suit was intentionally initiated or continued "without the honest belief of a defendant based on a reasonable understanding of the facts." Id. at 180. However, where an attorney is the defendant, malice is required. Id. To show legal malice a plaintiff must prove that the primary purpose for initiating or continuing the proceedings was one other than that of securing the proper adjudication of the claim. Id. "Attorneys who act after their own investigation are not liable for malicious prosecution if their acts are performed in good faith and have the honest purpose of protecting the interests of their client." Id. (quoting In re American Continental, 701 F.2d 1161, 1162 n.10, 58-2 USTC ¶13,000, 55-2 AFTR2d 58-5811 (CA-10, 1978)). To establish malice in law, legal malice cannot be inferred from the facts which establish a false or probable cause [or filing suit]. Id.	Where an attorney files suit on behalf of a client based on his own investigation, a showing of legal malice is required in order to support a malicious prosecution action against the attorney; to show legal malice, a plaintiff must prove that the primary purpose for initiating or continuing the proceedings was one other than that of securing the proper adjudication of the claim.	What is the malice standard in civil malicious prosecution actions?	01.1822.docx	LEGALCASE-00118916- LEGALCASE-00118917	0 0	1 1	1 1	1
2393	Goff Grp. v. Greenwich Ins. Co., 231 F. Supp. 2d 1147	251+178	However, "the FAA's prohibition policy does not operate without regard to the wishes of the contracting parties." <i>Mastrobbono v. Shearson Lehman Hutton, Inc.</i> , 514 U.S. 52, 115 S.Ct. 1221, 131 L.Ed.2d 79 (1995). The FAA's prohibition policy does not prevent the enforcement of agreements to arbitrate under different rules than those set forth in the Act itself. 9 U.S.C.A. 303-306. Act itself. Indeed, such a result would be quite inimical to the FAA's primary purpose of ensuring the private agreements to arbitrate are enforced according to their terms." <i>Volz</i> , 489 U.S. at 479, 109 S.Ct. at 1256. "Arbitration under the Act is a matter of consent, not coercion, and parties are generally free to structure their arbitration agreements as they see fit. Just as they may limit by contract the issues which they will submit to arbitration, they may also limit by contract the rules under which that arbitration will be conducted."	Federal Arbitration Acts (FAA) prohibition policy does not operate without regard to the wishes of the contracting parties, and thus, the FAA does not prevent the enforcement of agreements to arbitrate under different rules than those set forth in the Act itself. 9 U.S.C.A. 303-306.	Does the Federal Arbitration Acts (FAA) prohibition policy operate without regard to the wishes of the contracting parties?	Alternative Dispute Resolution - Memo 26-18.docx	ROSS-000284336-ROSS-000284338	1 1	1 1	1 1	1
2394	People v. Euro, 63 N.Y.2d 341	117+1	The term "death," as used in this State's statutes, may be construed to embrace a determination, made according to accepted medical standards, that a person has suffered an irreversible cessation of breathing and heartbeat or, when those functions are artificially maintained, an irreversible cessation of the brain's functions. The term "death" is defined in McKinney's CPLR § 17.0, § 17.0(2), and McKinney's Penal Law § 41.14, § 41.14(1), § 41.14(2), § 41.14(3), § 41.14(4), § 41.14(5), § 41.14(6), § 41.14(7), § 41.14(8), § 41.14(9), § 41.14(10), § 41.14(11), § 41.14(12), § 41.14(13), § 41.14(14), § 41.14(15), § 41.14(16), § 41.14(17), § 41.14(18), § 41.14(19), § 41.14(20), § 41.14(21), § 41.14(22), § 41.14(23), § 41.14(24), § 41.14(25), § 41.14(26), § 41.14(27), § 41.14(28), § 41.14(29), § 41.14(30), § 41.14(31), § 41.14(32), § 41.14(33), § 41.14(34), § 41.14(35), § 41.14(36), § 41.14(37), § 41.14(38), § 41.14(39), § 41.14(40), § 41.14(41), § 41.14(42), § 41.14(43), § 41.14(44), § 41.14(45), § 41.14(46), § 41.14(47), § 41.14(48), § 41.14(49), § 41.14(50), § 41.14(51), § 41.14(52), § 41.14(53), § 41.14(54), § 41.14(55), § 41.14(56), § 41.14(57), § 41.14(58), § 41.14(59), § 41.14(60), § 41.14(61), § 41.14(62), § 41.14(63), § 41.14(64), § 41.14(65), § 41.14(66), § 41.14(67), § 41.14(68), § 41.14(69), § 41.14(70), § 41.14(71), § 41.14(72), § 41.14(73), § 41.14(74), § 41.14(75), § 41.14(76), § 41.14(77), § 41.14(78), § 41.14(79), § 41.14(80), § 41.14(81), § 41.14(82), § 41.14(83), § 41.14(84), § 41.14(85), § 41.14(86), § 41.14(87), § 41.14(88), § 41.14(89), § 41.14(90), § 41.14(91), § 41.14(92), § 41.14(93), § 41.14(94), § 41.14(95), § 41.14(96), § 41.14(97), § 41.14(98), § 41.14(99), § 41.14(100), § 41.14(101), § 41.14(102), § 41.14(103), § 41.14(104), § 41.14(105), § 41.14(106), § 41.14(107), § 41.14(108), § 41.14(109), § 41.14(110), § 41.14(111), § 41.14(112), § 41.14(113), § 41.14(114), § 41.14(115), § 41.14(116), § 41.14(117), § 41.14(118), § 41.14(119), § 41.14(120), § 41.14(121), § 41.14(122), § 41.14(123), § 41.14(124), § 41.14(125), § 41.14(126), § 41.14(127), § 41.14(128), § 41.14(129), § 41.14(130), § 41.14(131), § 41.14(132), § 41.14(133), § 41.14(134), § 41.14(135), § 41.14(136), § 41.14(137), § 41.14(138), § 41.14(139), § 41.14(140), § 41.14(141), § 41.14(142), § 41.14(143), § 41.14(144), § 41.14(145), § 41.14(146), § 41.14(147), § 41.14(148), § 41.14(149), § 41.14(150), § 41.14(151), § 41.14(152), § 41.14(153), § 41.14(154), § 41.14(155), § 41.14(156), § 41.14(157), § 41.14(158), § 41.14(159), § 41.14(160), § 41.14(161), § 41.14(162), § 41.14(163), § 41.14(164), § 41.14(165), § 41.14(166), § 41.14(167), § 41.14(168), § 41.14(169), § 41.14(170), § 41.14(171), § 41.14(172), § 41.14(173), § 41.14(174), § 41.14(175), § 41.14(176), § 41.14(177), § 41.14(178), § 41.14(

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	Advanced Bodycare Sols. v. Thome Int'l, 524 F.3d 1235	257+114	This bright line rule makes sense not only in light of the FAA's statutory structure but its statutory purposes as well. The purpose of the FAA is to "relieve congestion in the courts and to provide parties with an alternative method of dispute resolution that is simpler and less costly than litigation." AGO Baker Sterling Heights LLC v. Am. Mult? Cinema Inc., 508 F.3d 995, 1001 (11th Cir.2007). But "[t]he Judiciary's goals of the FAA will be achieved only to the extent that courts ensure arbitration is an alternative to litigation, not an additional layer in a protracted contest." Bl. Herbert Int'l, 441 F.3d at 907. When, as here, a party has contractually preserved all its rights and remedies in court and is unwilling to arbitrate, the FAA's purposes are frustrated. The FAA's purposes are frustrated, and cost of litigation is increased by a protracted round of motions and cost of litigation is increased by a protracted round of motions and cost of litigation is increased by a protracted round of motions and cost of litigation is increased by a protracted round of motions and cost of litigation is increased by a protracted round of motions and cost of litigation is increased by a protracted round of motions and cost of litigation is increased by a protracted round of motions and cost of litigation is increased by a protracted round of motions and cost of litigation is increased by a protracted round of motions and cost of litigation is increased by a protracted round of motions and cost of litigation is increased by a protracted round of motions and cost of litigation is increased by a protracted round of motions and cost of litigation is increased by a protracted round of motions and cost of litigation is increased by a protracted round of motions 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2403	Gibson v. Am. Cyanamid Co., 760 F.3d 600	1484-2.2	In light of our conclusion that the manufacturers' substantive due-process challenge to Thomas must fail, and that Eastern Enterprises does not support that challenge, we can readily reject the manufacturers' other constitutional challenges. The primary premise of the manufacturers' argument that Thomas amounts to a "taking" of property under the Takings Clause is that the plurality opinion in Eastern Enterprises announces the applicable test, but as we explained earlier, there is no binding precedent arising from that case, whether on substantive due process or on the Takings Clause. This leaves the manufacturers without a basis to argue that a statute or regulation (let alone a judicial decision) that imposes a liability on a party rather than take or burden a specific property interest owned by that party amounts to a "taking." Instead, the Supreme Court has recognized that Congress, for example, "may set minimum wages, control prices, or create causes of action that did not previously exist," all without implicating the Takings Clause. <i>Connolly v. Pension Ben. Guaranty Corp.</i> , 475 U.S. 211, 223, 106 S.Ct. 1018, 89 L.Ed.2d 166 (1986) (emphasis added). Assessing liability "that adjusts the benefits and burdens of economic life to promote the common good... does not constitute a taking." <i>Id.</i> at 225, 106 S.Ct. 1018; <i>United Brotherhood of Carpenters & Joiners of America v. United Brotherhood of Carpenters & Joiners of America, Local 1500</i> , 484 U.S. 36, 68 L.Ed.2d 160, 103 S.Ct. 1078, 60 AF2d 103 (1986). <i>accord Concrete Pipe and Products of Cal., Inc. v. Construction Laborers Pension Trust for S. Cal.</i> , 508 U.S. 602, 643, 113 S.Ct. 2364, 124 L.Ed.2d 539 (1993).	Congress may set minimum wages, control prices, or create causes of action that did not previously exist, all without implicating the Takings Clause. U.S.C.A. Const.Amend. 5.	"Can Congress set minimum wages, control prices, or create causes of action that did not previously exist without implicating the Takings Clause?"	003095.docx	LEGALSE-00120384-LEGALSE-00120385	Condensed, Order, SA, Sub	0.88	839	1	15,344	14,873	21,876	9,029
	Stanton v. Metro Corp., 438 F.3d 119	227-1	To succeed on a defamation claim under Massachusetts law, a plaintiff must show that the defendant was at fault for the publication of a false statement, that the statement was defamatory, and that the plaintiff suffered a loss or is actionable without proof of economic loss. <i>White v. Blue Cross & Blue Shield of Mass., Inc.</i> , 442 Mass. 64, 66, 809 N.E.2d 1034, 1036 (Mass.2004); see also <i>Tohe v. Nugent</i> , 321 F.3d 335, 40 (1st Cir. 2003) (applying Massachusetts law); <i>Ravnikar v. Bogdanovskiy</i> , 438 Mass. 627, 629-30, 782 N.E.2d 508, 510-511 (Mass.2003). Metro moved to dismiss Stanton's complaint on the grounds that (1) the publication was not defamatory, (2) the statement was not "of and concerning" her, (3) Metro could not have acted negligently in publishing the article, and (4) Stanton failed to allege that the article contained any false statement of fact.	To succeed on a defamation claim under Massachusetts law, a plaintiff must show that the defendant was at fault for the publication of a false statement, that the statement was defamatory, and that the plaintiff suffered a loss or is actionable without proof of economic loss.	What must a Plaintiff show in order to succeed on a defamation claim?	003322.docx	LEGALSE-00120607-LEGALSE-00120608	Condensed, SA	0.66	0	1	0	1	1	1
2405	Reese v. State, 190 Misc. 316	1484-95	Where real estate is actually invaded by superinduced additions of water, whether or not the water is flowing, the owner is entitled to recover a plaintiff's damages as to effectively destroy or render it substantially useless. It is a taking within the meaning of the Constitution for which compensation must be made. <i>Pumpelly v. Green Bay Co.</i> , 13 Wall. 166, 181, 80 U.S. 166, 181, 20 L.Ed. 557, <i>Cartwright v. Southern P. Co.</i> , D.C., 206 F. 284. The destruction of 4.4 acres of claimants' land was, to that extent, an appropriation of such property, for to destroy property is, in that sense, to appropriate it, and neither the State nor the nation can exclude the owners from the rights and benefits to which they were thereore entitled without making compensation. <i>Oswego & Syracuse R. Co. v. State</i> , 226 N.Y. 351, 124 N.E. 8; <i>Higgins v. New York L.E. & W. R. Co.</i> , 78 Hun 567, 29 N.Y.S. 563; <i>Little Falls Fibre Co. v. Henry Ford & Son</i> , 127 Misc. 834, 217 N.Y.S. 534, modified 223 App.Div. 559, 229 N.Y.S. 445, affirmed 249 N.Y. 495, 164 N.E. 558, affirmed 280 U.S. 369, 50 S.Ct. 140, 74 L.Ed. 483; and cases therein cited; <i>Stevens v. State</i> , 65 Misc. 240, 121 N.Y.S. 402; <i>Weisman v. State</i> , 210 App.Div. 608, 206 N.Y.S. 570, same case 229 App.Div. 824, 242 N.Y.S. 776 (case 3); <i>American Woollen Co. v. State</i> , 229 App.Div. 824, 242 N.Y.S. 776 (case 3); <i>American Woollen Co. v. State</i> , 229 App.Div. 824, 242 N.Y.S. 776 (case 3); <i>American Woollen Co. v. State</i> , 229 App.Div. 824, 242 N.Y.S. 776 (case 3); <i>American Woollen Co. v. State</i> , 229 App.Div. 824, 242 N.Y.S. 776 (case 3); <i>American Woollen Co. v. State</i> , 229 App.Div. 824, 242 N.Y.S. 776 (case 3); <i>American Woollen Co. v. State</i> , 229 App.Div. 824, 242 N.Y.S. 776 (case 3); <i>American Woollen Co. v. State</i> , 229 App.Div. 824, 242 N.Y.S. 776 (case 3); <i>American Woollen Co. v. 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2407	Heflin v. Merrill, 154 So. 3d 887	307A-3	This Court "will reverse the circuit court's denial or grant of a motion in limine only if the court abused its discretion in denying or granting the motion." Wright v. Royal Carpet Servs., 95 So.3d 109, 115 (13 Miss.Cl.App.2010). When granting a motion in limine, the circuit court must first find the following two factors present: "(1) the material or evidence is inadmissible at a trial under the rules of evidence; and (2) the material will tend to prejudice the jury." (Per James, J., with one judge concurring and three judges concurring in part and in the result.)	When granting a motion in limine, the circuit court must first find the following two factors present: (1) the material or evidence in question will be inadmissible at a trial under the rules of evidence; and (2) the mere offer, reference, or statements made during trial concerning the material will tend to prejudice the jury. (Per James, J., with one judge concurring and three judges concurring in part and in the result.)	"In considering the merits of a motion in limine, does a trial judge apply a two-step analysis?"	Pretrial Procedure - Memo # 58 - C - AP.docx	ROSS-003310482-ROSS-003310483	SA, Sub	0.71	0	1	14,873	21,276	9,029
2408	Kulman v. Comm'n for Lawyer Discipline, 197 S.W.3d 867	307A-3	A motion in limine is a procedural device that permits a party to identify, prior to trial, certain evidentiary issues the court may be asked to rule upon. See Hartford Accident & Indem. Co. v. McCandall, 369 S.W.2d 331, 335 (Tex.1963); Fort Worth Hotel Ltd. P'ship v. Enerschw Corp., 377 S.W.2d 746, 757 (Tex.App.-Fort Worth 1995, no pet.). The purpose of such a motion is to prevent opposing parties from asking prejudicial questions and introducing prejudicial evidence in front of the jury without first having the court determine whether the evidence is admissible. Bifano v. Houston 14th Dist. 2000, no pet.; Enerschw Corp., 377 S.W.2d 747, 757 (Tex.App.-Houston 14th Dist. 2000, no pet.). The granting of the motion is not a final ruling on the evidence. Bifano v. Young, 665 S.W.2d 536, 541 (Tex.App.-Corpus Christi 1983, writ ref'd n.r.e.). A ruling on a motion in limine preserves nothing for review. Hartford, 369 S.W.2d at 335 ("In neither case" (1) questions not asked or evidence not offered, or (2) questions asked or evidence offered should the error of the trial court in overruling the motion in limine be regarded as reversible error."); Enerschw Corp. v. Enerschw Corp., 377 S.W.2d 750, 757 (Tex.App.-Houston 14th Dist. 1984, no pet.). The court's actions in granting or denying a motion in limine presents nothing for appellate review. "A judgment will not be reversed unless the evidence is in fact offered. See Accord v. Gen. Motors Corp., 695 S.W.2d 111, 116 (Tex.1984); Hartford, 369 S.W.2d at 335. Thus, to complain on appeal that the trial court erroneously excluded evidence, Buhrman must have offered the evidence during trial and obtained an adverse ruling from the trial court. Ugo v. Villanueva, 177 S.W.3d 496, 501 (Tex.App.-Houston 14th Dist. 2005, no pet.).	A motion in limine is a procedural device that permits a party to identify, prior to trial, certain evidentiary issues the court may be asked to rule upon.	"Is a motion in limine a procedural device that permits a party to identify, before trial, certain evidentiary rulings that the court may be asked to make so as to prevent the asking of prejudicial questions and the making of prejudicial statements in the presence of the jury?"	Pretrial Procedure - Memo # 58 - C - AP.docx	ROSS-003283011-ROSS-003283013	Condensed, SA	0.91	0	1	0	1	
2409	State ex rel. Toledo Edison Co. v. Clyde, 76 Ohio St. 345-348	317A-114	However, municipal utility operations are subject to statewide police power limitations for health and safety reasons; for example, water treatment. Carlton v. Whitman (1959), 44 Ohio St.2d 62, 73 O.O.2d 265, 35 Ohio St.3d 121, 53 O.O.2d 265, 1959 WL 1012, 1959 WL 1013, 1959 WL 1014, 1959 WL 1015, 1959 WL 1016, 1959 WL 1017, 1959 WL 1018, 1959 WL 1019, 1959 WL 1020, 1959 WL 1021, 1959 WL 1022, 1959 WL 1023, 1959 WL 1024, 1959 WL 1025, 1959 WL 1026, 1959 WL 1027, 1959 WL 1028, 1959 WL 1029, 1959 WL 1030, 1959 WL 1031, 1959 WL 1032, 1959 WL 1033, 1959 WL 1034, 1959 WL 1035, 1959 WL 1036, 1959 WL 1037, 1959 WL 1038, 1959 WL 1039, 1959 WL 1040, 1959 WL 1041, 1959 WL 1042, 1959 WL 1043, 1959 WL 1044, 1959 WL 1045, 1959 WL 1046, 1959 WL 1047, 1959 WL 1048, 1959 WL 1049, 1959 WL 1050, 1959 WL 1051, 1959 WL 1052, 1959 WL 1053, 1959 WL 1054, 1959 WL 1055, 1959 WL 1056, 1959 WL 1057, 1959 WL 1058, 1959 WL 1059, 1959 WL 1060, 1959 WL 1061, 1959 WL 1062, 1959 WL 1063, 1959 WL 1064, 1959 WL 1065, 1959 WL 1066, 1959 WL 1067, 1959 WL 1068, 1959 WL 1069, 1959 WL 1070, 1959 WL 1071, 1959 WL 1072, 1959 WL 1073, 1959 WL 1074, 1959 WL 1075, 1959 WL 1076, 1959 WL 1077, 1959 WL 1078, 1959 WL 1079, 1959 WL 1080, 1959 WL 1081, 1959 WL 1082, 1959 WL 1083, 1959 WL 1084, 1959 WL 1085, 1959 WL 1086, 1959 WL 1087, 1959 WL 1088, 1959 WL 1089, 1959 WL 1090, 1959 WL 1091, 1959 WL 1092, 1959 WL 1093, 1959 WL 1094, 1959 WL 1095, 1959 WL 1096, 1959 WL 1097, 1959 WL 1098, 1959 WL 1099, 1959 WL 1100, 1959 WL 1101, 1959 WL 1102, 1959 WL 1103, 1959 WL 1104, 1959 WL 1105, 1959 WL 1106, 1959 WL 1107, 1959 WL 1108, 1959 WL 1109, 1959 WL 1110, 1959 WL 1111, 1959 WL 1112, 1959 WL 1113, 1959 WL 1114, 1959 WL 1115, 1959 WL 1116, 1959 WL 1117, 1959 WL 1118, 1959 WL 1119, 1959 WL 1120, 1959 WL 1121, 1959 WL 1122, 1959 WL 1123, 1959 WL 1124, 1959 WL 1125, 1959 WL 1126, 1959 WL 1127, 1959 WL 1128, 1959 WL 1129, 1959 WL 1130, 1959 WL 1131, 1959 WL 1132, 1959 WL 1133, 1959 WL 1134, 1959 WL 1135, 1959 WL 1136, 1959 WL 1137, 1959 WL 1138, 1959 WL 1139, 1959 WL 1140, 1959 WL 1141, 1959 WL 1142, 1959 WL 1143, 1959 WL 1144, 1959 WL 1145, 1959 WL 1146, 1959 WL 1147, 1959 WL 1148, 1959 WL 1149, 1959 WL 1150, 1959 WL 1151, 1959 WL 1152, 1959 WL 1153, 1959 WL 1154, 1959 WL 1155, 1959 WL 1156, 1959 WL 1157, 1959 WL 1158, 1959 WL 1159, 1959 WL 1160, 1959 WL 1161, 1959 WL 1162, 1959 WL 1163, 1959 WL 1164, 1959 WL 1165, 1959 WL 1166, 1959 WL 1167, 1959 WL 1168, 1959 WL 1169, 1959 WL 1170, 1959 WL 1171, 1959 WL 1172, 1959 WL 1173, 1959 WL 1174, 1959 WL 1175, 1959 WL 1176, 1959 WL 1177, 1959 WL 1178, 1959 WL 1179, 1959 WL 1180, 1959 WL 1181, 1959 WL 1182, 1959 WL 1183, 1959 WL 1184, 1959 WL 1185, 1959 WL 1186, 1959 WL 1187, 1959 WL 1188, 1959 WL 1189, 1959 WL 1190, 1959 WL 1191, 1959 WL 1192, 1959 WL 1193, 1959 WL 1194, 1959 WL 1195, 1959 WL 1196, 1959 WL 1197, 1959 WL 1198, 1959 WL 1199, 1959 WL 1200, 1959 WL 1201, 1959 WL 1202, 1959 WL 1203, 1959 WL 1204, 1959 WL 1205, 1959 WL 1206, 1959 WL 1207, 1959 WL 1208, 1959 WL 1209, 1959 WL 1210, 1959 WL 1211, 1959 WL 1212, 1959 WL 1213, 1959 WL 1214, 1959 WL 1215, 1959 WL 1216, 1959 WL 1217, 1959 WL 1218, 1959 WL 1219, 1959 WL 1220, 1959 WL 1221, 1959 WL 1222, 1959 WL 1223, 1											

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	Wolf v. Sparrow, 706 So. 2d 881.	366+27	Generally speaking, subrogation is the "substitution of one person to the position of another with reference to a legal claim or right." Eastern National Bank v. Girardale Fed. Savs. and Loan Ass'n, 508 So.2d 1323, 1324 (Fla. 3d DCA 1987). "The doctrine of subrogation is generally invoked when one person has satisfied the obligations of another and equity compels that the person discharging the debt stand in the shoes of the person whose claim has been discharged, thereby succeeding to the rights and priorities of the original creditor." Id. In Eastern, we recognized two distinct categories of subrogation: equitable and conventional subrogation. See id. We stated that equitable subrogation arises "when a person discharging the obligation [of another] is under a legal duty to do so or when the person discharges the obligation to protect an interest in, or a right to, the property." Id. Equitable subrogation "is not available to a mere volunteer or stranger who, without any duty or obligation to intervene and without being so requested, pays the debt of another." West American Insurance Co. v. Yellow Cab Co., 495 So.2d 204, 207 (Fla. 5th DCA 1986), review denied, 504 So.2d 769 (Fla.1987); see also Eastern, 508 So.2d at 1324. "Conventional subrogation[, however,] arises by contract. See id. at 1324. "Conventional subrogation is the substitution of one person to the rights of another by agreement, express or implied, in which the person or one of the parties to the agreement is in the place of creditor with respect to such rights, remedies, or securities as creditor may have against debtor."	Conventional subrogation arises by virtue of an agreement, express or implied, that third person or one having no previous interest in matter involved shall, upon discharging obligation or paying debt, be substituted in place of creditor with respect to such rights, remedies, or securities as creditor may have against debtor.	"Is equitable subrogation distinct from conventional subrogation, which is premised on the contractual obligations of the parties?"	043715.docx	LEGALSEASE-00121408-LEGALSEASE-00121409	Condensed, SA	0.65	0	1	15,344	21,876	1	9,029
	2411			"Subrogation is a right which is founded upon equity and justice and accrues when one person for the protection of his own interests, pays a debt for which another is primarily liable."	"Subrogation is a right which is founded upon equity and justice and accrues when one person for the protection of his own interests, pays a debt for which another is primarily liable."	"Is subrogation a right which is founded upon equity and justice and accrues when one person for the protection of his own interests, pays a debt for which another is primarily liable?"	Subrogation - Memo # 560 - C - 71.docx	ROSS-003324232-ROSS-003324233	Condensed, SA	0.72	0	1	0	1	
2412			Finally, Eastern's rigid view that it has standing based on subrogation. "Subrogation" is the substitution of one person in the place of another with reference to a lawful claim, demand or right, so that he who is substituted succeeds to the rights of the other in relation to the debt or claim, and its rights, remedies, or securities."	"Subrogation" is the substitution of one person in the place of another with reference to a lawful claim, demand or right, so that he who is substituted succeeds to the rights of the other in relation to the debt or claim, and its rights, remedies, or securities.	"Is subrogation the substitution of one person in the place of another with reference to a lawful claim, demand or right, so that he who is substituted succeeds to the rights of the other in relation to the debt or claim, and its rights, remedies, or securities?"	Subrogation - Memo # 655 - C - SA.docx	LEGALSEASE-00011485-LEGALSEASE-00011486	Condensed, SA	0.56	0	1	0	1	1	
2413	Fin. Sec. Assur. v. Stephens, 500 F.3d 1276	366+1	Under Wisconsin law, subrogation may properly be applied whenever a person other than a mere volunteer pays debt which in equity and good conscience should be satisfied by another."	Under Wisconsin law, subrogation may properly be applied whenever a person other than a mere volunteer pays debt which in equity and good conscience should be satisfied by another.	Can subrogation properly be applied whenever a person other than a mere volunteer pays debt which in equity and good conscience should be satisfied by another?	Subrogation - Memo # 669 - C - SU.docx	ROSS-003286299-ROSS-003286300	Condensed, SA, Sub	0.68	0	1	1	1	1	
2414	In re Contr. Alternatives, 2 F.3d 670	366+11	Under Ohio law, surety that pays amounts owed to subcontractor, or supplier, is subrogated to the rights of those it has paid and to the rights of those persons whose obligations the surety has discharged in other words, owner and contractor."	Under Ohio law, surety that pays amounts owed to a subcontractor or supplier, is subrogated to the rights of those it has paid and to the rights of those persons whose obligations the surety has discharged in other words, owner and contractor.	Is a surety that pays amounts owed to a subcontractor or laborer subrogated to the rights of those it has paid and to the rights of those persons whose obligations the surety has discharged?	Subrogation - Memo # 682 - C - SU.docx	ROSS-003297283-ROSS-003297284	SA, Sub	0.78	0	0	1	1	1	
2415			Subrogation is "[t]he substitution of one person in the place of another with reference to a lawful claim, demand or right, so that he who is substituted succeeds to the rights of the other in relation to the debt or claim, and its rights, remedies or securities." ... However, Ins. Co. v. Borough of Atl. Highlands, 310 N.J.Super. 599, 603, 709 A.2d 328 (Law Div.1997) (quoting Black's Law Dictionary (5th Ed.1979)), aff'd, 310 N.J.Super. 568, 709 A.2d 236 (App.Div.), cert. denied, 156 N.J. 383, 718 A.2d 322 (1998). The principle is an equitable device intended "to compel the ultimate discharge of an obligation by the one who in good conscience ought to pay it." Standard Acc. Ins. Co. v. Fellicchia, 15 N.J. 162, 171, 104 A.2d 588 (1954). The doctrine "promotes" "essential justice" between the parties." Hayes v. Pittsgrove Twp. Bd. of Educ., 269 N.J.Super. 449, 454-55, 635 A.2d 998 (App.Div.1994) (quoting Culver v. Ins. Co. of N. Am., 115 N.J. 451, 456, 559 A.2d 400 (1989)).	"Subrogation" is the substitution of one person in the place of another with reference to a lawful claim, demand, or right, so that he who is substituted succeeds to the rights of the other in relation to the debt or claim, and its rights, remedies, or securities.	"Is subrogation the substitution of one person in the place of another with reference to a lawful claim, demand, or right, so that he who is substituted succeeds to the rights of the other in relation to the debt or relation to the debt or claim, and its rights, remedies, or securities?"	041556.docx	LEGALSEASE-00121548-LEGALSEASE-00121549	Condensed, SA	0.73	0	1	0	1		
2416															

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2417	Pakistan v. United States, 433 F.Supp.936	221+138	All countries recognize that a coastal state possesses sovereignty or territorial jurisdiction within three miles of its coasts. The Digest of International Law, Vol. 4, which was prepared by Majorie M. Whiteman, Assistant Legal Advisor, the Department of State, however, such as, are distinguished from inland waters, it said, are conceded by modern nations to be subject to the "exclusive sovereignty of no single nation. The extent to which a nation can extend its power into the sea for any purpose is subject to the consent of other nations and is dependent upon a variety of different distances may be recognized for different purposes."	While all countries recognize that a coastal state possesses sovereignty or territorial jurisdiction within three miles of its coasts, such sovereignty does not extend past this three-mile limit.	"While all countries recognize that a coastal state possesses sovereignty or territorial jurisdiction within three miles of its coasts, such sovereignty coasts, does such sovereignty extend past the three-mile limit?"	International Law - Memo # 16 - C - Lk.docx	ROSS-00331151-ROSS-00331153	SA, Sub	0.81	0	1	1		9/029	
2418	Reilly v. Meffe, 6 F.Supp.34760	289+421	Courts consider a number of factors in determining the existence of a partnership, including: the sharing of profits, "the existence of a written or oral partnership agreement, the joint ownership and control of property, the ability of members to bind the business entity, and the nature of the tax returns filed by the business entity." "[I]f one every business relationship is unique, no single fact or circumstance can operate as a conclusive test for the existence of a partnership," particularly when the parties have dealt casually with each other." Id. (quoting In re Estate of Nuss, 97 Ohio App.3d 191, 646 N.E.2d 504, 507 [1994]). Southwest's complaint focuses on the exclusion of its evidence at trial and the failure of the court to grant summary judgment. See Waldon v. City of Longview, 855 S.W.2d 875, 880 (Tex.App., 7yle: 1993, no writ); see also Watt/Mart Stores, Inc. v. Dege's, 971 S.W.2d 72, 77 (Tex.App., Beaumont 1996), rev'd on other grounds, 968 S.W.2d 354 (Tex.1998). A court's ruling granting a motion in limine is not a ruling on the admissibility of the evidence and does not preserve error. See Waldon, 855 S.W.2d at 880.A motion in limine simply prohibits obtaining a ruling on the admissibility of those issues outside the presence of the jury. See In re R.V., Jr., and C.V., 977 S.W.2d 777, 780 (Tex.App., Fort Worth 1998, no pet.). We begin with the purpose of an order in limine. A ruling on a motion in limine is not final on the admissibility of material and instead is designed to prevent mention of prejudicial matter to the jury before the trial begins. Hays v. Hays, 537 NE.2d 54, 59 (Ind.Ct.App.1988). One consequence of this is that the ruling granting or denying a motion in limine is not available as a ground for reversal. The second consequence is that error based upon the subsequent admission of evidence must be predicated upon timely and proper objection when the evidence is offered at trial. That is not to say that a party who violates an order in limine may do so with impunity. The sanction is within the discretion of the trial court and appropriate sanctions might extend to declaration of a mistrial and/or punishment for contempt).	Under Ohio law, courts consider a number of factors in determining the existence of a partnership, including the sharing of profits, the existence of a written or oral partnership agreement, the joint ownership and control of property, the ability of members to bind the business entity, and the nature of the tax returns filed by the business entity.	Is a partners ability to bind the partnership one of the key factors of partnership?	QJ.855.docx	LEGALISE-00122507-LEGALISE-00122508	Condensed SA, Sub	0.52	0	1	0	1		
2419	Sou. Country Enterprises v. New Valley of Co., 951 S.W.2d 490	307A+3	Southwest's complaint focuses on the exclusion of its evidence at trial and the failure of the court to grant summary judgment. See Waldon v. City of Longview, 855 S.W.2d 875, 880 (Tex.App., 7yle: 1993, no writ); see also Watt/Mart Stores, Inc. v. Dege's, 971 S.W.2d 72, 77 (Tex.App., Beaumont 1996), rev'd on other grounds, 968 S.W.2d 354 (Tex.1998). A court's ruling granting a motion in limine is not a ruling on the admissibility of the evidence and does not preserve error. See Waldon, 855 S.W.2d at 880.A motion in limine simply prohibits obtaining a ruling on the admissibility of those issues outside the presence of the jury. See In re R.V., Jr., and C.V., 977 S.W.2d 777, 780 (Tex.App., Fort Worth 1998, no pet.). We begin with the purpose of an order in limine. A ruling on a motion in limine is not final on the admissibility of material and instead is designed to prevent mention of prejudicial matter to the jury before the trial begins. Hays v. Hays, 537 NE.2d 54, 59 (Ind.Ct.App.1988). One consequence of this is that the ruling granting or denying a motion in limine is not available as a ground for reversal. The second consequence is that error based upon the subsequent admission of evidence must be predicated upon timely and proper objection when the evidence is offered at trial. That is not to say that a party who violates an order in limine may do so with impunity. The sanction is within the discretion of the trial court and appropriate sanctions might extend to declaration of a mistrial and/or punishment for contempt).	Ruling granting a motion in limine is not a ruling on the admissibility of the evidence and does not preserve error. See Waldon v. City of Longview, 855 S.W.2d 875, 880 (Tex.App., 7yle: 1993, no writ); see also Watt/Mart Stores, Inc. v. Dege's, 971 S.W.2d 72, 77 (Tex.App., Beaumont 1996), rev'd on other grounds, 968 S.W.2d 354 (Tex.1998). A court's ruling granting a motion in limine is not a ruling on the admissibility of those issues outside the presence of the jury.	Does a motion in limine merely preclude reference to certain matters without affecting their admissibility or does it prohibit the introduction of those issues outside the presence of the jury?	QJ.4122.docx	LEGALISE-00122015-LEGALISE-00122018	SA, Sub	0.63	0	0	1	1		
2420	Allied Prop. & Cos. Inc. Co. v. Good, 919 NE.2d 144	307A+3	We begin with the purpose of an order in limine. A ruling on a motion in limine is not final on the admissibility of material and instead is designed to prevent mention of prejudicial matter to the jury before the trial begins. Hays v. Hays, 537 NE.2d 54, 59 (Ind.Ct.App.1988). One consequence of this is that the ruling granting or denying a motion in limine is not available as a ground for reversal. The second consequence is that error based upon the subsequent admission of evidence must be predicated upon timely and proper objection when the evidence is offered at trial. That is not to say that a party who violates an order in limine may do so with impunity. The sanction is within the discretion of the trial court and appropriate sanctions might extend to declaration of a mistrial and/or punishment for contempt).	Sanction for violation of motion in limine is within the discretion of the trial court and under appropriate circumstances might extend to declaration of a mistrial and/or punishment for contempt.	Is a sanction for violation of motion in limine within the discretion of the trial court and under appropriate circumstances might extend to declaration of a mistrial and/or punishment for contempt?	Pretial Procedure - Memo # 89 - C - JTB.docx	ROSS-00387102-ROSS-00387103	Condensed SA, Sub	0.78	0	1	1	1		
2421	Montgomery Light & Power Co. v. Town of Linden, 217 Ind. 471	145+15	While the Public Service Commission Act (Acts of 1913, ch. 76, as amended by Acts of 1933, ch. 190) expressly provides that a municipality may construct or acquire utility property within the boundaries of such municipal corporation, and also within six miles of the corporate limits of such municipality, without approval of the Public Service Commission, the act further provides that such approval shall be required if the municipality desires to acquire utility property located outside of its corporate limits without the consent of the Public Service Commission. Section 10 of the said Rural Electric Membership Act, supra, provides that "no person, copartnership, or corporation not formed under this act, shall contract, own, manage or control any system within any territory included in that described in the articles of incorporation of, and to be incorporated by, such person, copartnership, or corporation, which extends over more than such construction, ownership, operation, management, control or system (a) actually exists on the effective date of this act or on the date when such territory is first included in that to be served by such corporation formed under this act;" without securing from the Public Service Commission, after a hearing, a declaration that public convenience and necessity requires such construction or acquisition. The language of this act plainly indicates that the legislature had in mind that persons desiring to establish electric systems within rural territories should be approved by any other person or corporation not formed under the act, on territory already appropriated and being served by a corporation formed under the act. The record in this case does not show that the appellee herein was attempting to acquire any property within territory being served by a rural electric membership corporation. The record in	The language of the Rural Electric Membership Act prohibiting a municipality from acquiring utility property located outside of its corporate limits without the consent of the Public Service Commission indicates that the Legislature had in mind that there should be no endorsement, without approval of the Public Service Commission, by a municipality of a project extending beyond the corporate limits of the municipality already appropriated and being served by a corporation formed under the act. Burns' Am.St. 555-4418.	Is the Public Service Commissions (PSC) approval required for a municipallys encroachment upon Rural Electric Membership Act (REMA)?	QJ.2191.docx	LEGALISE-00121906-LEGALISE-00121907	Order, SA, Sub	0.83	1	0	1	1		

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2428	Glen v. Club Mediterranee S.A., 365 F. Supp. 241263	22-1342	The act of state doctrine is not a jurisdictional doctrine. Rather, it is a doctrine of judicial restraint that prohibits a United States court from passing judgment on the validity of an act of a foreign sovereign taken within its own territory. <i>W.S. Kipatnick & Co. v. Environmental Technologies Corp.</i> , 493 U.S. 400, 405, 110 S.Ct. 701, 107 L.Ed.2d 816 (1990); <i>Banco Nacional de Cuba v. Sabbatino</i> , 376 U.S. 398, 401, 84 S.Ct. 923, 11 L.Ed.2d 808 (1964). (The act of state doctrine is a court-imposed control on the exercise of judicial power, not a bar to the availability of the judicial act applied foreign sovereign power committed within its own territory"). <i>Fogade v. ENB Receivable Trust</i> , 263 F.3d 1274 (11th Cir. 2001).The court in <i>Banco Nacional de Cuba v. Sabbatino</i> reasoned that Every sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another, done within its own territory. Redress of grievances by reason of such acts must be obtained through the means open to the injured party under the laws that he has enacted by the government by which the grievance was caused or between themselves.	"Act of state doctrine" is not a jurisdictional doctrine; rather, it is a doctrine of judicial restraint that prohibits a United States court from passing judgment on the validity of an act of a foreign sovereign taken within its own territory.	Does the act of state doctrine prohibit a United States court from passing judgment on the validity of an act of a foreign sovereign taken within its own territory?	02009.docx	LEGALASE-00123469-LEGALASE-00123470	Condemned, SA	0.78	0	1	15,344	21,876	9,029
2429	Beanal v. Freeport-McMoran, 197 F.3d 161	24-763	Nevertheless, "[i]f is only where the nations of the world have demonstrated that the wrong is of mutual and not merely several concern, by means of express international records, that a wrong generally recognized becomes an international law violation in the meaning of the [A]S." <i>Paragip</i> , 830 F.2d at 888. Thus, the A/S "applies principles of international law." See <i>Zaata v. Quinn</i> , 207 F.2d 691, 692 (2d Cir.1958) (per curiam). Beanal fails to show that these treaties and agreements enjoy universal acceptance in the international community. The sources of international law cited by Beanal and the amici merely refer to a general sense of environmental responsibility and state abstract rights and liberties devoid of articulable or discernable standards and regulations to identify practices that constitute international law. The court in <i>Beanal</i> also fails to show that the A/S is subject to the standard embodied in federal statutory law to address environmental violations domestically, see The National Environmental Policy Act (2 U.S.C. § 4321 et seq.) and The Endangered Species Act (16 U.S.C. § 1532). Nonetheless, federal courts should exercise extreme caution when adjudicating environmental claims under international law to insure that environmental policies of the United States do not displace environmental policies of other governments. Furthermore, the argument to abstain from interfering in a sovereign's environmental practices to obtain from the United States a remedy for environmental torts and abuses occur within the sovereign's borders and do not affect neighboring countries. Therefore, the district court did not err when it concluded that Beanal failed to show in its pleadings that Freeport's mining activities constitute environmental torts or abuses under international law.	It is only when nations of world have demonstrated that the wrong is of mutual and not merely several concern, by means of express international records, that a wrong generally recognized becomes international law violation within meaning of Alien Tort Statute (ATS), 28 U.S.C.A. § 1350.	Does a wrong generally recognized become an international law violation within the meaning of the Alien Tort Statute (ATS)?	International Law - Memo # 360 - MC.docx	ROSS-003322490-ROSS-003322492	SA, Sub	0.85	0	1	1	1	1
2430	Virgin Atl. Airways Ltd. v. British Airways PLC, 872 F. Supp. 52	22-1342	The act of state doctrine "precludes the courts of this country from inquiring into the validity of the public acts of a recognized foreign sovereign committed within its own territory." <i>British Airways Ltd. v. Virgin Atl. Airways Ltd.</i> , 872 F. Supp. 52 (D.C. Va. 1994). The act of state doctrine is a judicially created doctrine that prohibits a United States court from passing judgment on the validity of an act of a foreign sovereign committed within its own territory. <i>W.S. Kipatnick & Co. v. Environmental Technologies Corp.</i> , 493 U.S. 400, 405, 110 S.Ct. 701, 107 L.Ed.2d 816 (1990); <i>Banco Nacional de Cuba v. Sabbatino</i> , 376 U.S. 398, 401, 84 S.Ct. 923, 11 L.Ed.2d 808 (1964). British Airways argues that the act of state doctrine requires inquiry into the complaint because this case "fundamentally involves an inquiry into the sovereign acts of the U.K. government." An examination of the complaint shows that the complaint does describe in detail certain acts of the U.K. government (most importantly its pre-1980 operation of British Airways as a state-owned enterprise), but none of those acts is the subject of the complaint. The complaint does not describe the acts complained of as legislative, executive, or judicial acts of the U.K. government. The complaint describes the acts as corporate travel discounts and TACOs, the USA transaction, and the discriminatory treatment of plaintiffs' customers. "All are alleged to be defendant's acts, not the conduct of the U.K. government. Thus, this is not a situation where the court will be forced to require "into the acts and conduct of the officials of the foreign state, its affairs and its policies and the underlying reasons and motivations for the actions of the foreign government.'" <i>W.S. Kipatnick & Co. v. Environmental Technologies Corp.</i> , 493 U.S. 400, 409*10, 110 S.Ct. 701, 107 L.Ed.2d 816 (1990) [act of state doctrine does not apply when the validity of a foreign sovereign act is not at issue]	"The act of state doctrine" precludes courts of this country from inquiring into the validity of the public acts of a recognized foreign sovereign committed within its own territory.	Does the act of state doctrine preclude courts of the US from inquiring into the validity of the public acts of a recognized foreign sovereign power committed within its own territory?	International Law - Memo # 404 - C - MCS.docx	ROSS-003324493-ROSS-003324496	Condemned, SA	0.89	0	1	0	1	1